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No. _____

In The

# Supreme Court of the United States

CENTRAL TEXAS NUDISTS; ROBERT A. MORTON, JR.; and CHRISTINE A. MORTON, Individually and as next friend of ROBERT A. MORTON, III, REBECCA E. MORTON, and CHARLES G. MORTON, Minor Children,

*Petitioners,*

v.

COUNTY OF TRAVIS; and LOWER COLORADO RIVER AUTHORITY,

*Respondents.*

**On Petition For Writ Of Certiorari To The Third Court Of Appeals Of Texas**

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

The practice of social familial nudism–parents engaging in public recreational activities with their children and other like minded individuals while nude–is the means by which naturist parents instill important values in their children. Is this expressive activity protected by the First Amendment?

Does the United States Constitution limit the ability of a state to interfere with and unduly impede the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism?

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## OPINIONS BELOW

The decision of the three-judge panel of the Third Court of Appeals of Texas is not reported, but may be found at *Central Texas Nudists v. County of Travis*, 2000 Tex. App. LEXIS 8136 (Tex. App.–Austin 2000), and is reproduced in Appendix A to this Petition.

The Order of the 201st Judicial District Court of Travis County, Texas is not published, but is reproduced in Appendix B to this Petition.

The decision of the Texas Supreme Court denying certiorari is not reported, and is reproduced in Appendix C to this Petition.

## JURISDICTION

The judgment of the Texas Supreme Court denying certiorari was entered on May 3, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

**The First Amendment to the Constitution provides:**

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**The Fourteenth Amendment to the Constitution provides:**

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Travis County Commissioners Court Orders relevant to this action are reproduced in Appendix D and Appendix E to this petition.

## STATEMENT OF THE CASE

This case poses an important legal question that has never been specifically addressed by this court: To what extent does the United States Constitution prohibit a local government from impeding the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism. The practice of social familial nudism–parents engaging in public recreational activities with their children and other like minded individuals while nude–is the means by which naturist parents instill important values in their children. Following this court's recent decision in *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), many local governments have begun examining their nudity ordinances and several have enacted complete bans on public nudity. Until finally resolved by this court, the

issue of whether a governmental entity can unduly end the practice of social familial nudism will continue to resurface. This case offers a particularly suitable vehicle for resolving this important issue.

## I. The Facts.

There is little dispute about the facts in this case. The case involves two changes to rules governing a public clothing optional park in Travis County officially named McGregor Park, but popularly known as Hippie Hollow.[1]

Maintaining the historical clothing optional status of the park after assuming its management, Travis County officially sanctioned nude swimming and sunbathing by placing signs which state:

> "Nude swimming or sunbathing may be occurring beyond this point – consult attendant for details of statutes regarding nudity."

For several decades Travis County has been host to the only clothing optional public park in the state where patrons, including families with children, have enjoyed nude sunbathing, nude swimming and other legal outdoor

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1. Although the park is actually owned by the Lower Colorado River Authority "LCRA," it was leased to the County in the 1980s. The County is responsible for the management of the park and the lease agreement between LCRA and the County provides the County with the right to promulgate and enforce *reasonable* rules governing the park, provided, however, that such rules be submitted to and approved in advance by LCRA.

nude activities.

Despite the County's demonstrated tolerance for the naturist lifestyle and its hospitality to the naturists living in and visiting the county, on July 11, 1995, the Travis County Commissioners' Court enacted two changes to the park rules applicable to McGregor Park. Those changes have restricted access to all minors under the age of eighteen and warned that parties who authorize or consent to the nude display of children and the nude display of adults with children present under the age of eighteen in the park will be investigated and prosecuted if possible.

The legislative history is particularly important in understanding the issues presented in this case.[2] The rules were not enacted to offset any concern about some perceived negative secondary effect associated with public nudity. Quite the contrary, the County did not change the clothing optional status of the park. Rather, as made poignantly clear from the transcripts of the hearings, the rules were enacted in response to the coercive threats of the County Attorney precisely because he disapproved of the practice and even the very existence of social familial nudism, as well as the values naturist parents seek to instill in their children.

The County Attorney recommended that children be excluded from the park and privately lobbied for the rule changes after he became inflamed by a poster contest

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2. A full transcript of the two public hearings pertaining to the rule changes are reproduced in Appendix G and Appendix F to this petition.

for children that was scheduled to be conducted by a local civil liberties organization during the National Nude Week celebrations at the park. The County Attorney asserted the untenable position that the practice of social familial nudism violated state law.

Following an executive session, the County Judge requested that the County Attorney explain to the public the legal issues as he advised them during executive session both as their counsel and the County Prosecutor. According to his pronouncement, the County Attorney advised the Commissioner's Court that any nude display of children or nude display of adults while children are present, even when the child is accompanied by a parent, was, in his opinion, illegal and if the County refused to ban children from the park, it could be found to be a culpable participant in the ostensibly illegal activity.

Following the rule changes, petitioners were prohibited from engaging in the practice of social familial nudism with their children at the park.

## II. The Proceedings Below.

Petitioners Central Texas Nudists, Robert Morton, Jr. and Christine Morton, individually and as next friend for their children, Robert III, Rebecca and Charles, filed suit in state court against Travis County and the LCRA seeking declaratory judgment that the newly enacted park rules restricting access to minors at a clothing optional public park violated the United States and Texas Constitutions when that minor is accompanied by a parent or guardian.

The 201st Judicial District Court of Travis County, Texas granted summary judgment on behalf of the County and LCRA. A three judge panel of the Third Court of Appeals of Texas upheld the summary judgment, holding that the park rules are not prohibited by the First or Fourteenth Amendments to the United States Constitution. The Texas Supreme Court denied a petition for review.

## REASONS FOR GRANTING CERTIORARI

Over ten years ago Justice Souter observed in *Barnes v. Glen Theatre, Inc.*, that "[nudity per se] is a condition, not an activity, and the voluntary assumption of that condition, without more, apparently expresses nothing beyond the view that the condition is somehow appropriate to the circumstances." *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 581 (1991) (Souter, J., concurring). Nevertheless he found, that when "nudity is combined with expressive activity, its stimulative and attractive value certainly can enhance the force of expression." *Id.* Although this court has found that being "in a state of nudity" is not an inherently expressive condition, this court has never examined the expressive components of nudity in the context of parents engaging in public recreational activities with their children while nude as the mode by which naturist parents communicate their essential family values to their children.

This past year in *City of Erie v. Pap's A.M.*, this court upheld complete bans on public nudity without addressing the impact of such global bans on naturist families. Consequently, this court's resolution of the questions presented in this case is essential to the

continued viability of the naturist movement in this country. Not only is this an important issue of Federal law, this case offers a particularly suitable vehicle for resolving this important issue.

## I. Whether the Constitution Affords any Protection to Naturist Parents Who Practice Social Familial Nudism With Their Children Is an Important Issue of Federal Law

### A. The Issue is Particularly Important to the Continued Viability of the Naturist Movement in America

While the naturist movement is a vibrant force in American culture, the movement is not large enough to shield their lifestyle from suppression by the majority. Many people in our society are hostile to the naturist movement and the practice of social familial nudism. In light of this court's recent decision in *City of Erie v. Pap's A.M.*, 259 U.S. 277 (2000), the continued viability of the naturist movement has been seriously threatened. For these reasons, the question of whether the United States Constitution affords any protection to naturist parents who practice social familial nudism with their children is an important issue of Federal law warranting this court's review.

#### 1. Naturist Parents and Their Families Represent A Significant Portion of Our Society

The historical and cultural roots of the naturist movement run deep in the American culture. *See generally, e.g. Roberts v. Clement*, 252 F.Supp. 836

(E.D. Tenn. 1966) (providing history and philosophy of the nudist movement); CEC CINDER, THE NUDIST IDEA (1998); WILLIAM E. HARTMAN ET AL, NUDIST SOCIETY (1991); FRED ILFELD, JR. & ROGER LAUER, SOCIAL NUDISM IN AMERICA (1964); K. Bacher, 205 *Arguments and Observations in Support of Naturism*, 16.1 NUDE & NATURAL: THE QUARTERLY J. OF CLOTHES-OPTIONAL LIVING 61 (1996).

The American Association for Nude Recreation "AANR" (formerly known as the American Sunbathing Association) has been in existence for more than 60 sixty years and has over two hundred and thirty affiliated clubs in the United States.[3] In 1980 The Naturist Society was founded and now boasts more than 27,000 members.[4] Naturists have organized nationally through such groups as the AANR and The Naturist Society in order to promote opportunities to practice their beliefs as well as educate the public to their philosophy, lifestyle and the benefits of body acceptance. These groups have many members, including families with children, throughout the United States. This diverse sub-culture consists of people from all age groups, economic and cultural backgrounds.

Although there are a significant number of naturists in our society, this subculture is not large enough to insulate its interests from hostile political opposition: They simply lack the votes. Consequently,

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3. For more information see http://www.aanr.com (visited July 30, 2001).

4. For more information see http://www.naturistsociety.com (visited July 30, 2001).

the questions presented are particularly important to naturists because they must rely on Constitutional protections to insure the viability of the practice of social familial nudism as a means for communicating their values to their children.

### 2. Social Familial Nudism Is the Activity by which Naturist Parents Communicate the Essential Core of the Naturist Family Values to Their Children

Naturists believe that engaging in nude social activities with their children is an essential component of their effort to imbue their children with the important values of body acceptance, respect for diversity, and self appreciation. Fundamental to the naturist lifestyle is the belief that the body in all its many forms is beautiful and natural. At the core of the naturist family philosophy is the ideal of body acceptance and a healthy, wholesome attitude toward nudity and the human body. For these reasons, naturists jealously protect the distinct boundaries between nudity and sexuality. Naturists do not equate nudity with sexuality and this is an essential principle which naturists seek to instill in their children.

Importantly, the empirical evidence available on the subject of social familial nudism validates the naturist lifestyle choice for many concerned American parents. According to an eighteen year longitudinal study conducted at the University of California in Los Angeles "UCLA", children exposed to adult nudity were less likely to engage in adolescent sexual activity or anti-social behavior such as petty or felony theft, fighting, assaults, vandalism and substance abuse. Dr. Paul

Abramson at UCLA testified that "there is no empirical basis for claiming that children are harmed by being part of a nudist lifestyle. In fact, the lifestyle has several documented benefits, in terms of body image and adolescent stability."[5] The summary judgment evidence would certainly support the proposition that the naturist movement, albeit representing a small minority of the American citizenry, offers a wholesome and healthy valid choice for the enlightened American family.[6]

**a. The Mode of Expression Utilized by Naturist Parents to Inculcate Their Children with Their Values has been Sanctioned by This Court as a Mode of Expression Entitled to Protection**

This Court has recently held that inculcating children with values through the practice of adult supervised recreational activity is a mode of expression entitled to first amendment protection regardless how diffuse that message may be. *Boy Scouts of America v. Dale*, 120 S.Ct. 2446, 2452 (2000). Although the Third Court of Appeals noted that petitioners shared a common goal with the Boy Scouts to instill values in children, the court mistakenly found that the manner in which these values are transmitted is distinguishable because the

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5. Dr. Abramson's affidavit is reproduced in Appendix K of this petition.

6. Robert Morton, Jr.'s affidavit is reproduced in Appendix H; Christine A. Morton's affidavit is reproduced in Appendix I; and Robert Morton, III's affidavit is reproduced in Appendix J.

recreational activity at issue in this case is conducted in the nude. That distinction, however, goes directly to the content of the message. The fact that the recreational activities are conducted in the nude is certainly an essential and intrinsic component of the message inherent in the values naturist parents seek to imbue to their children. It is not, however, a distinction that changes the nature of the mode of expression.

In *Boy Scouts of America*, the message at issue regarded the acceptance of the homosexual lifestyle. *Id.* at 2452-53. This court reasoned that if the Boy Scouts of America were forced to allow homosexual men to serve as its leaders, this would taint the values espoused by the organization and communicated to the children via adult supervised recreational activities. *Id.* at 2453-54. Just as the sexual preference of its leaders can infiltrate the values (i.e., message) communicated to young scouts by virtue of engaging in recreational activities with their leader, nudity in this case can also infiltrate the values (i.e., message) communicated to naturist children by virtue of engaging in social familial nudism with their parents. In each case, however, the mode of expression is the same: the inculcation of values to children through their participation in adult supervised recreational activities. In both instances, the message directed at the children is impacted by the condition of the adult and this condition goes to the nature of the message.

### 3. The family is the most primary of all the values-inculcating institutions which deserve Constitutional protection

One of the theoretical bases for our First Amendment freedoms is its crucial role in nurturing and creating citizens who are well prepared to exercise the responsibilities that necessarily attend participation in a democratic republic. The same is also true of the various "mediating institutions," "intermediate associations," and "little platoons" of democracy that make up what political scientists and philosophers call civil society. *See generally, e.g.*, ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 513-524 (1969 ed.); PETER L. BERGER & RICHARD JOHN NEUHAUS, TO EMPOWER PEOPLE: THE ROLE OF MEDIATING STRUCTURES IN PUBLIC POLICY (1977). This is one reason why this court has taken care to protect expressive association as well as individual speech-acts. *See Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984) ("According protection to collective effort on behalf of shared goals is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.").

What this court has said about the membership of organizations, and about the importance of mediating institutions, must apply directly to the family–the most fundamental of all expressive associations. The family is the most primary, in terms of time and importance, of all the mediating, values-inculcating institutions which deserve Constitutional protection both for its own sake and for the sake of the democratic values that require it. Just as groups must be able to control their message to the world, free from unjustified government intrusion into their membership, rituals, and commitments, so must be protected the decisions of parents to control and shape the character formation of their family.

Parents are the ones who are deciding what school would be best for their child, or which friends' influences are likely to be beneficial, or whether their child is ready for contact football, or for a PG-13 movie, or for a date with the class president. When parents make these and other decisions, parents are not merely setting rules, they are expressing and communicating their values to their child and also to the community. *See, e.g., Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 844 (1977) (noting important role of the family in "promot[ing] a way of life through the instruction of children"); *Moore v. City of East Cleveland*, 431 U.S. 494, 503-504 (1977) ("It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural."). By keeping a watchful eye on the forces and influences that shape a child–for whose character and conduct society will rightly hold them accountable–parents are, in a very real sense, speaking to their children and to the community about what is important. Under our Constitution, the State may not, in the usual course of things, co-opt these messages. *See, e.g., Farrington v. Tokushige*, 273 U.S. 284, 298 (1927) (noting that the law at issue would "deprive parents of a fair opportunity to procure for their children instruction which they think important and we cannot say is harmful"); *compare Roberts*, 468 U.S. at 633 (O'Connor, J., concurring) ("Protection of the association's right to define its membership derives from the recognition that the formation of an expressive association is the creation of a voice, and the selection of members is the definition of that voice.").

That the content of parents' message is sometimes diffuse does not lessen its claim to constitutional protection. *See Hurley v. Irish-American Gay, Lesbian &*

*Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569 (1995) ("a narrow, succinctly articulable message is not a condition of constitutional protection."). Nor should it matter that, in the opinion of outsiders the content of the family's message, of parents' communication to their children, of parents' decisions about who and what messages should be permitted access to their child, could be improved. *Hurley*, 515 U.S. at 581 ("Disapproval of a private speaker's statement does not legitimize use of the [government's] power to compel the speaker to alter the message by including one more acceptable to others."). It is not within the province of the state to make significant decisions concerning the moral upbringing of children merely because it could make a better decision any more than the State has the power to revise the content of a political candidate's message or a minister's sermon because it thinks it could communicate a better message.

Certainly, this is reinforced by this court's recent decision in *Troxel v. Granville*, 530 U.S. 57 (2000) (affirming that parents have a fundamental liberty interest in directing the care, custody and control of their children). This court acknowledged that the parents' liberty interest in directing the upbringing of their own children is "perhaps the oldest of the fundamental liberty interests recognized by this Court." *Id.* at 56. This court found that "the Due Process Clause does not permit a State to infringe on the fundamental right of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made." *Id.* at 61.

The law's concept of the family presumes that parents possess what a child lacks in maturity, experience and capacity for judgement required for making life's

difficult decisions. *Parham v. J.R.*, 442 U.S. 584, 602 (1979). As this court has explained, "so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children." *Troxel,* 530 U.S. at 58.

### 4. This Issue is Particularly Important at This Time in Light of *City of Erie v. Pap's A.M.*

The practice of social familial nudism as a means for naturist parents to inculcate their children with naturist family values is a threatened mode of expression across the entire nation as a result of this court's recent decision in *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000). When all public nudity is banned, naturist parents are essentially denied the only effective means for communicating their values to their children: engaging in public nude recreational activities with their children.

Likewise, unlike the erotic dancing at issue in *Pap's A.M.*, a complete ban on nudity has more than *de minimis* impact on the practice of social familial nudism. *See id.* at 294 (O'Connor, J., plurality) (reasoning that because the dancers can still perform wearing pasties and G-strings, the effect on the overall expression was *de minimis*). The requirement of even the minimal cover afforded by pasties and G-strings would completely alter the message of parents to their children that nudity is not shameful.

As a result of the *Pap's* decision, this court's resolution of the questions presented in this case are critical to the continued viability of the naturist movement. The only way the naturist movement can co-exist in a world where complete bans on nudity are upheld is for this court to address the constitutional protections afforded the practice of social familial nudism. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 291 n.6 (2000) (Scalia, J. concurring) (finding that a complete ban on nudity must make exceptions for nudity protected by decisions of this court).

### B. The Questions Presented In This Case Are Particularly Important Because of the Need to Resolve Confusion in the Courts Below and To Correct the Error of the Third Court of Appeals of Texas

Although this court has remained silent regarding the communicative aspects of social familial nudism as an instructive tool for naturist parents, lower courts have found that nude sunbathing is not expressive activity entitled to First Amendment protection. *See, e.g., South Florida Free Beaches v. City of Miami*, 734 F.2d 608 (11th Cir. 1984); *Williams v. Kleppe*, 539 F.2d 803 (1st Cir. 1976). The Third Court of Appeals of Texas following the reasoning of the *South Florida Free Beaches* and *Kleppe* courts found that the rights asserted by the Petitioners in this case are indistinguishable from the rights addressed by these courts.

The parental rights issues in this case, however, are wholly and completely separate from any issue regarding mere public nudity. The activity sought to be protected in this case is not the right to sunbathe in the

nude as was the case in *South Florida Free Beaches v. City of Miami*, 734 F.2d 608 (11th Cir. 1984) and *Williams v. Kleppe*, 539 F.2d 803 (1st Cir. 1976). Rather, this is about the right of a parent to instill that parent's own moral values in that parent's own children free from undue state interference and impediment. Significantly, the right to sunbathe nude is not challenged by the park rules at issue in this case. The clothing optional status of the McGregor Park is sanctioned by Travis County.

The activity at issue in this case, however, is the right of parents to engage in social familial nudism with their children. Although nudity is an essential component of the values naturist parents choose to instill in their children through the practice of social familial nudism, this activity transcends any consideration of nudity *per se*.

In support for upholding a complete ban on public nudity in *City of Erie v. Pap's A.M.*, Justice O'Connor quotes Justice Stevens from the plurality opinion in *Young v. American Mini Theatres, Inc.*,: "even though we recognize that the First Amendment will not tolerate the total suppression of erotic materials that have some arguably artistic value, it is manifest that society's interest in protecting this type of expression is of a wholly different, and lesser, magnitude than the interest in untrammeled political debate," and "few of us would march our sons or daughters off to war to preserve the citizen's right to see" specified anatomical areas exhibited at [nude dancing] establishments." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 281 (2000) (O'Connor, J. plurality) (quoting Justice Stevens in *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 50 (1976) (plurality)). While this may be true of erotic nude dancing, it certainly

is not true of the rights at issue in this case. Unlike erotic dancing, the messages naturist parents communicate to their children through the practice of social familial nudity can be exalted to the level and magnitude of political debate. Certainly, most people are willing to march our sons or daughters off to war to preserve the right of fit parents to direct the moral upbringing of their children free from undue state interference.

In light of the lower court's confusion regarding the important communicative nature of the practice of social familial nudism and the roll this activity plays in nurturing naturist values and maintaining family autonomy, it is essential that this court address the questions presented in this petition.

## II. This Case Offers a Particularly Suitable Vehicle for Resolving this Important Issue

This case offers a particularly suitable vehicle for deciding the questions presented in this petition primarily because this case does not involve a ban or restriction on nudity, nor does it in any manner involve the erotic dancing industry. This court's decisions regarding nudity, as well as the decisions of the lower courts, have never involved a fact situation where nudity was not banned or restricted to certain zones. *See, e.g., City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *South Florida Free Beaches v. City of Miami*, 734 F.2d 608 (11th Cir. 1984); *Williams v. Kleppe*, 539 F.2d 803 (1st Cir. 1976). Since Travis County is actually hospitable to the naturist movement, the issues presented in this petition do not question the extent of protection afforded nude

sunbathers. Rather, because this case only involves the restriction of minors accompanied by their parents, it offers an ideal vehicle for this court to focus specifically on the communicative value of nude activities in the context of parental supervision and parental child-rearing decisions.

Additionally, the legislative history in this case clearly establishes that the rules were enacted for the precise purpose of silencing the parental message conveyed by social familial nudism: that body acceptance and nudity are not shameful and immoral. The Travis County Commissioners Court enacted the rule changes to avoid the threat of prosecution imposed by the County Attorney's erroneous proclamation that the practice of adults engaging in nude recreational activities while in the presence of their children or for children to engage in nude activities in the presence of adults is illegal under the laws of this state. Certainly, such a proclamation is a direct attack on the practice of social familial nudism regardless of whether or not the nude activity takes place at McGregor Park. It is clear from the record in this case, that but for the County Attorney's erroneous legal conclusions, the Travis County Commissioners' Court would not have banned children from the park.

Ironically, the event that prompted the County Attorney's attention to this issue was the advertisement of a poster contest that was planned for the children attending McGregor Park during the National Nude Week celebrations. The rules were enacted to halt this clearly protected communicative activity. The rules banning minors at the park and warning that anyone found engaging in nude activities in the presence of children or engaging in activities involving nude children would be

investigated and prosecuted if possible were enacted to halt the poster contest and the practice of social familial nudism at the park. Apparently, the County Attorney preferred prior restraint to the prospect of prosecuting parents after the fact. Certainly, if this court fails to grant certiorari in this case, these parents will be denied any legal venue in which to challenge the erroneous contentions of the County Attorney. The messages these parents choose to convey to their children through the practice of social familial nudism will have been effectively silenced by their government.

## CONCLUSION

This case presents important questions that have never been addressed by this court. As a result of this court's silence, the right of naturist parents to define and shape the character of their family by engaging in public nude recreational activities with their children has been seriously threatened. Petitioners respectfully request that this Court grant their petition for writ of certiorari, and address the extent of protection the United States Constitution provides naturist parents who direct the moral and social upbringing of their children by engaging in the practice of social familial nudism.

Respectfully submitted,

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**APPENDIX A**

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**THIRD COURT OF APPEALS**
**OF TEXAS**

[Filed December 7, 2000]

**NO. 03-00-00024-CV**

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| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

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**JUDGES:** Jan P. Patterson, Justice. Before Chief Justice Aboussie, Justices B. A. Smith and Patterson.

**OPINIONBY:** Jan P. Patterson

## OPINION

The question presented is whether county park rules that ban children's access to a clothing-optional park violate the United States and Texas Constitutions. *See* U.S. Const. amend. I, XIV; Tex. Const. art. I, § § 3, 8, 19, 27. Central Texas Nudists, Robert A. Morton, Jr., and Christine A. Morton, individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, minor children (collectively, "appellants") filed suit against Travis County and the Lower Colorado River Authority, seeking a declaratory judgment and permanent injunctive relief. This appeal arises from a judgment denying appellants' motion for summary judgment and granting the motions for summary judgment of Travis County and the Lower Colorado River Authority. We affirm the district court's judgment.

## FACTS

McGregor Park[1] is a public park owned by the Lower Colorado River Authority and situated on Lake Travis in Travis County. The county has managed McGregor Park since the 1980s when it leased the park from the Lower Colorado River Authority. In 1995, Travis County promulgated two park rules for McGregor Park, which were adopted by the Commissioners Court of Travis County. Recognizing that nude sunbathing occurs in the park, the Commissioners (1) restricted access to the park

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1. McGregor Park is also known locally as Hippie Hollow.

to persons over the age of eighteen and (2) directed:

> Any authorization or consent to the nude display of children and the nude display of adults with children present under the age of eighteen in this park will be treated as a violation of the law and park rules. Violators and parties to such violations will be investigated and prosecuted if possible.

Because appellants are "naturists" who believe that engaging in nude social activities with their children instills values of body acceptance and other naturist values, they contend that these new rules infringe on their constitutional rights of, *inter alia*, freedom of expression and privacy, by prohibiting their children from accompanying them to the park.

After considering each party's motion for summary judgment, the district court granted the motions filed by Travis County and the Lower Colorado River Authority and denied appellants' motion.

**STANDARD OF REVIEW**

Because the propriety of a ruling on a motion for summary judgment and the constitutionality of a rule raise questions of law, we review these matters *de novo*. *Texas Med. Liab. Trust v. Zurich Ins. Co.*, 945 S.W.2d 839, 842 (Tex. App.--Austin 1997, writ denied); *Armbrister v. Morales*, 943 S.W.2d 202, 205 (Tex. App.--Austin 1997, no writ) (citing *Barber v. Colorado Indep. Sch. Dist.*, 901

S.W.2d 447, 450 (Tex. 1995)). The proper inquiry on appeal is whether the defendant, in seeking summary judgment, fulfilled its initial burden of establishing that no genuine issue of material fact exists and that judgment should be granted as a matter [*4] of law. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 675-79 (Tex. 1979). Evidence is viewed in the light most favorable to the non-movant. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548-49 (Tex. 1985). Similarly, all reasonable inferences are indulged and any doubts resolved in favor of the non-movant. *Id.* at 549.

When each party has filed a motion for summary judgment and the district court has granted one motion while denying another, we review the summary judgment proof presented by each party, determine all questions presented, and "render such judgment as the trial court should have rendered." *Commissioners Court v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997). "When there are multiple grounds for summary judgment and the order does not specify the ground on which the summary judgment was granted, the appealing party must negate all grounds on appeal." *State Farm Fire & Cas. Co. v. S.S. & G.W.*, 858 S.W.2d 374, 381 (Tex. 1993); *accord Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989). If the appellant fails to negate each ground on which the judgment may have been rendered, we must uphold the summary judgment. *See Carr*, 776 S.W.2d at 569.

In this case, each party filed a motion for summary judgment and the district court granted appellees' motions.

Because the trial court did not specify the grounds on which it rendered judgment, we must affirm the judgment if any of the grounds advanced in the motions are meritorious.

**DISCUSSION**

In their first issue, appellants challenge the constitutionality of the two Travis County park rules, contending that they are facially invalid. *See* U.S. Const. amend. I, XIV; Tex. Const. art. I, § § 3, 8, 19, 27.[2] n2 Constitutional claims must be examined by looking at the rights of the class of people who are being excluded from a particular activity. *City of Cleburne v. Cleburne Living*

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2. Appellants assert arguments based on their rights to equal protection, privacy, substantive due process, and freedom of expression and of association under the Texas Constitution. *See* Tex. Const. art. I, § § 3, 8, 19, 27. With respect to their privacy and substantive due process arguments, appellants direct our attention to several Texas cases, which acknowledge a parent's fundamental right to direct the upbringing of a child. *See, e.g., In re Doe 5*, 19 S.W.3d 346, 376 (Tex. 2000) (Hecht, J., dissenting); *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 447 (Tex. 1998) (Gonzalez, J., concurring); *In re J.W.T.*, 872 S.W.2d 189, 194-95 (Tex. 1994); *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976). Our review of these opinions, however, reveals no discussion implicating the Texas Constitution. We decline to address the issues raised by appellant under the Texas Constitution because appellants' briefs have not provided argument or citations to authorities to support these arguments. *See* Tex. R. App. P. 38.1(h).

*Ctr.*, 473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985). Here, both rules exclude individuals under eighteen years of age from entering McGregor Park.

Appellants assert that the park rules violate naturist families' right to equal protection under the United States Constitution. U.S. Const. amend. XIV. Appellants argue that by prohibiting minor children from entering the park, even when accompanied by their parents, the rules distinguish between classes of individuals on the basis of whether minor children accompany them to McGregor Park.

The Equal Protection Clause requires that all similarly situated persons be treated alike. *Id.* Courts perform an equal protection inquiry "if the challenged government action classifies or distinguishes between two or more relevant groups." *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993). Because the rules treat two groups of individuals differently, we must subject both rules to an equal protection inquiry.

The first step of this inquiry requires us to determine what burden of justification must be satisfied by looking at the interests affected. *Zablocki v. Redhail*, 434 U.S. 374, 383, 54 L. Ed. 2d 618, 98 S. Ct. 673 (1978). When a law affects individuals in a suspect classification differently or implicates a fundamental right, the law must be examined under a strict scrutiny analysis. *Plyler v. Doe*, 457 U.S. 202, 216-17, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982); *San Antonio Indep. Sch. Dist. v. Rodriguez*,

411 U.S. 1, 40, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973). Appellants do not argue that these rules treat persons in a suspect classification differently. For the strict scrutiny test to apply here, we must conclude that these rules implicate a fundamental right.

Appellants first assert that the park rules interfere with their fundamental right to direct the upbringing of their children. *See Pierce v. Society of Sisters*, 268 U.S. 510, 69 L. Ed. 1070, 45 S. Ct. 571 (1925); *Meyer v. Nebraska*, 262 U.S. 390, 67 L. Ed. 1042, 43 S. Ct. 625 (1923). Appellants characterize the rights at issue as involving an individual's personal choice in matters of family life. *See Griswold v. Connecticut*, 381 U.S. 479, 482-84, 14 L. Ed. 2d 510, 85 S. Ct. 1678 (1965). Appellants further contend that a parent's right to raise a child free of state interference is within the constitutional protection of privacy secured by the Fourteenth Amendment. *See Griswold*, 381 U.S. at 484.

Appellants also direct our attention to the Supreme Court's recent opinion in *Troxel v. Granville*, asserting that it supports their position. *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). In *Troxel*, the Court considered a state statute that permitted any person, including a grandparent, to petition for visitation rights at any time. *Troxel*, 120 S. Ct. at 2057. The Court affirmed the state supreme court's holdings that "'parents have a right to limit visitation of their children with third persons'" and that "between parents and judges, 'the parents should be the ones to choose whether to expose

their children to certain people or ideas.'" *Troxel*, 120 S. Ct. at 2059 (quoting *In re Smith*, 137 Wn.2d 1, 969 P.2d 21, 31 (Wash. 1998), *aff'd sub nom*, *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000)). We read *Troxel* as affirming a parent's right to direct the upbringing of a child. *Troxel*, 120 S. Ct. at 2059-60 ("The Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning care, custody, and control of their children.").

But these parental rights are not absolute. *See, e.g., Ingraham v. Wright*, 430 U.S. 651, 51 L. Ed. 2d 711, 97 S. Ct. 1401 (1977) (no parental right to demand approval before corporal punishment is inflicted by public school teachers and administrators); *Planned Parenthood v. Danforth*, 428 U.S. 52, 49 L. Ed. 2d 788, 96 S. Ct. 2831 (1976) (no parental right to veto a minor's decision to terminate a pregnancy); *Runyon v. McCrary*, 427 U.S. 160, 49 L. Ed. 2d 415, 96 S. Ct. 2586 (1976) (no parental right to educate children in private segregated academies); *Kite v. Marshall*, 661 F.2d 1027 (5th Cir. 1981) (no parental right to send children to summer athletic camps). In *Kite v. Marshall*, the Fifth Circuit expressly acknowledged that "parental authority falls short of being constitutionally absolute." *Kite*, 661 F.2d at 1029. The court further opined that these cases exemplify circumstances in which "the Supreme Court refrained from clothing parental judgment with a constitutional mantle." *Id.*

While we agree with appellants' contentions that the Fourteenth Amendment encompasses a general right to direct the upbringing of children, we do not agree that these park rules impede that right. Neither rule prohibits appellants from raising their children according to the naturist philosophy. Rather, the rules impose a restriction on where the practice of this philosophy may occur by establishing an age restriction for admittance to McGregor Park that applies to all families, whether naturist or not. Consequently, we reject appellants' arguments based on the rights to privacy and to substantive due process. We now consider appellants' arguments that the rules implicate a fundamental right under the First Amendment, namely, the rights to freedom of association and of expression.

Appellants claim that both park rules infringe upon their right to associate with their children. Appellants also assert that "the associational rights of parents and children are among those intimate relationships which are protected by the First Amendment."

We recognize that appellants have a right to enter into and maintain certain intimate human relationships. *See, e.g., Roberts v. United States Jaycees*, 468 U.S. 609, 617-18, 82 L. Ed. 2d 462, 104 S. Ct. 3244 (1984) (discussing two distinct lines of cases recognizing a right to associate, one related to certain intimate human relationships and another "for the purpose of engaging in those activities protected by the First Amendment--speech, assembly, petition for the redress of grievances, and the exercise of religion"); *Zablocki*, 434 U.S. at 383-86

(marriage); *Smith v. Organization of Foster Families*, 431 U.S. 816, 844, 53 L. Ed. 2d 14, 97 S. Ct. 2094 (1977) (the raising and education of children); *Moore v. East Cleveland*, 431 U.S. 494, 503-04, 52 L. Ed. 2d 531, 97 S. Ct. 1932 (1977) (cohabitation with one's relatives). However, we fail to see how either park rule infringes on this right. The rules do not affect the ability of the Mortons or other naturist parents to associate with their children, but regulate only where such associations may occur. These rules are analogous to the ordinance in *City of Dallas v. Stanglin* which barred minors from certain dance halls. *City of Dallas v. Stanglin*, 490 U.S. 19, 21 n.2, 104 L. Ed. 2d 18, 109 S. Ct. 1591 (1989). As in *Stanglin*, appellants here do not have a general right to associate with other naturists at McGregor Park. *See Stanglin*, 490 U.S. at 25 (rejecting the notion that the Constitution recognizes a generalized right of "social association").

Appellants further assert that the park rules violate their right to expressive association as recognized by the Supreme Court in *Roberts v. United States Jaycees*. *Roberts*, 468 U.S. at 617-18. In that case, the Court acknowledged a right to associate for the purpose of engaging in those activities protected by the First Amendment. *Id.* The issue, then, is whether the First Amendment encompasses appellants' activities at McGregor Park.

Appellants argue that their conduct at McGregor Park constitutes an expressive activity and that the park rules violate their right to freedom of expression by

impeding their ability to engage in this conduct as a family. Appellants characterize their nude recreational and social activities at McGregor Park as instilling values in their children in a safe public setting. On the record before us, we find that appellants' First Amendment right to expressive association does not encompass their activities at the park.

The Supreme Court has acknowledged that nudity itself is not expressive conduct and is not constitutionally protected. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 211 n.7, 45 L. Ed. 2d 125, 95 S. Ct. 2268 (1975) ("Scenes of nudity in a movie, like pictures of nude persons in a book, must be considered as a part of the whole work. In this respect, such nudity is distinguishable from the kind of public nudity traditionally subject to indecent exposure statutes." (internal citations omitted)); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 581, 115 L. Ed. 2d 504, 111 S. Ct. 2456 (1991) (Souter, J., concurring) ("[Nudity *per se*] is a condition, not an activity ....").

Appellants maintain that their naturist conduct at McGregor Park is entitled to First Amendment protection because it constitutes more than "mere nudity." At oral argument, appellants directed our attention to the Supreme Court's recent opinion in *Boy Scouts of America v. Dale*. *Boy Scouts of Am. v. Dale*, 147 L. Ed. 2d 554, 2000 U.S. LEXIS 4487, 120 S. Ct. 2446, 2452 (2000). In *Dale*, the Supreme Court reviewed a decision by the New Jersey Supreme Court, which held that the state's public accommodations law required the Boy Scouts to admit

Dale, an avowed homosexual, as an adult member. *Dale*, 120 S. Ct. at 2449. The Court held that "applying New Jersey's public accommodations law in this way violates the Boy Scouts' First Amendment right of expressive association." Id.

Appellants sought to analogize their activities at McGregor Park to those engaged in by the Boy Scouts. While appellants and the Boy Scouts may share a common goal to instill values in children, the manner in which these values are transmitted is distinguishable. The Boy Scouts, as an organization, seeks to transfer its values to its members by "having its adult leaders spend time with the youth members, instructing and engaging them in activities like camping, archery, and fishing." *Dale*, 120 S. Ct. at 2452. In contrast, appellants seek to convey their values to their children by engaging in swimming, sunbathing, and other forms of recreation in the nude at McGregor Park. Of critical importance to appellants is not the activity itself, but rather, the manner in which the activity is conducted--in the nude and in public. We therefore find that this case is distinguishable from *Boy Scouts of America v. Dale*.

The protected activity that appellants claim in this case is identical to the one asserted in *South Florida Free Beaches v. City of Miami*. *South Fla. Free Beaches v. City of Miami*, 734 F.2d 608, 608 (11th Cir. 1984). In that case, the plaintiffs argued that nude sunbathing in a public area is the manner in which they advocate and communicate their philosophy that the human body is wholesome and

that nudity is not indecent to others. *Id.* at 609. The Eleventh Circuit rejected that argument and held that nude sunbathing is not protected expression. *Id.* ("Stripped of constitutional protection, nude sunbathing is subject to legitimate governmental proscriptions. Thus, we hold that the First Amendment does not clothe these plaintiffs with a constitutional right to sunbathe in the nude."); *accord Williams v. Kleppe*, 539 F.2d 803, 806 n.9 (1st Cir. 1976) (sanctioning a ban on nude sunbathing by stating, "No rights of free speech can be said to have been involved here"). Likewise, in *Hang On, Inc. v. City of Arlington*, the Fifth Circuit recognized, "'Nudity is protected as speech only when combined with some mode of expression which itself is entitled to First Amendment protection.'" *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248, 1254 (5th Cir. 1995) (quoting *South Fla. Free Beaches*, 734 F.2d at 610).

Here, as in *South Florida Free Beaches*, appellants also seek to garner First Amendment protection for their efforts to communicate their values that the human body is wholesome and that nudity is not indecent to others. Because the facts of this case are indistinguishable from *South Florida Free Beaches*, we reach the same conclusion. For the reasons stated in *South Florida Free Beaches* and *Hang On*, we decline to hold that nude sunbathing is protected expression. Accordingly, we reject appellants' First Amendment argument based on the right to freedom of expression. In doing so, we also reject appellants' argument that the park rules impinge on their right to expressive association. Consequently, we conclude that the park rules do not implicate a fundamental right

under the United States Constitution.

Having concluded that the strict scrutiny test does not apply here, we must now identify whether an intermediate scrutiny or rational basis analysis is appropriate. On its face, the government action in this case distinguishes between individuals based solely on age. Age distinctions are subject to the rational relationship test. *Gregory v. Ashcroft*, 501 U.S. 452, 470-71, 115 L. Ed. 2d 410, 111 S. Ct. 2395 (1991) (referencing *Vance v. Bradley*, 440 U.S. 93, 97, 59 L. Ed. 2d 171, 99 S. Ct. 939 (1979); *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 314, 49 L. Ed. 2d 520, 96 S. Ct. 2562 (1976)).

An analysis under the rational relationship test is deferential to the government. *Gregory*, 501 U.S. at 470-71 ("In cases where a classification burdens neither a suspect group nor a fundamental interest, 'courts are quite reluctant to overturn governmental action on the ground that it denies equal protection of the laws.'" (citation omitted)); *Kite*, 661 F.2d at 1030 ("A state action viewed under the rational basis banner is presumed to be valid."). The government must prove only that the laws bear "some rational relationship to a legitimate state purpose." *Rodriguez*, 411 U.S. at 44; *accord Gregory*, 501 U.S. at 471. In examining a city ordinance imposing an age restriction on admission to certain dance halls, the Supreme Court stated,

> [A] State does not violate the Equal Protection Clause merely because the

> classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.'

*Stanglin*, 490 U.S. at 26-27 (quoting *Dandridge v. Williams*, 397 U.S. 471, 485, 25 L. Ed. 2d 491, 90 S. Ct. 1153 (1970)) (citations omitted). We must now determine whether the park rules are justified by a legitimate state purpose.

Appellants concede in their brief that they do not challenge Travis County's "right to regulate the activities of minors and ban unaccompanied minors from [McGregor Park]."[3] Consistent with their argument that the rules are

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3. Courts have recognized that laws may treat minors differently from adults. *Bellotti v. Baird*, 443 U.S. 622, 634, 61 L. Ed. 2d 797, 99 S. Ct. 3035 (1979); *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993); *Barber v. Colorado Indep. Sch. Dist.*, 901 S.W.2d 447, 451 (Tex. 1995). Furthermore, the Supreme Court has acknowledged that states have a "strong and legitimate interest in the welfare of its young citizens, whose immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely." *Hodgson v. Minnesota*, 497 U.S. 417, 444, 111 L. Ed. 2d 344, 110 S. Ct. 2926 (1990). In addition, the Court has recognized that a "state is entitled to adjust its legal system to account for children's vulnerability and their needs for 'concern, ... sympathy, and ... paternal attention.'" *Bellotti*, 443 U.S. at 635 (quoting *McKeiver v.*

subject to strict scrutiny, appellants charge instead that "the rules are not narrowly crafted to the least restrictive manner." Appellants claim that the curfew ordinance in *Qutb* was upheld because the law established defenses for infractions of the ordinance, including one that exempted minors accompanied by a parent or guardian. Unlike this case, however, the court in *Qutb* applied a strict scrutiny analysis to the curfew ordinance after it "assumed without deciding that the right to move about freely is a fundamental right." *Qutb*, 11 F.3d at 492. We have already concluded that the park rules at issue are not subject to a strict scrutiny analysis; therefore, the government need not satisfy this requirement here.[4] With no dispute that a legitimate state interest exists for an age restriction, we conclude that the rules do not violate the Equal Protection Clause. Accordingly, we overrule appellants' first issue.

***Exclusion of Summary Judgment Evidence***

In their second issue on appeal, appellants maintain that the district court erred when it excluded two items of evidence submitted in support of their motion, namely, a videotape entitled "Natural Summer" and incident reports from Pease Park compiled by the Austin Police

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*Pennsylvania*, 403 U.S. 528, 550, 29 L. Ed. 2d 647, 91 S. Ct. 1976 (1970)).

4. The government need only show that a law is narrowly tailored to serve a compelling state interest under a strict scrutiny analysis. *Plyler v. Doe*, 457 U.S. 202, 216-17, 72 L. Ed. 2d 786, 102 S. Ct. 2382 (1982).

Department ("APD"). Appellants assert that this evidence rebutted Travis County's contentions that McGregor Park incident reports demonstrated an increased risk of sexual offenses against children and that these rules were enacted to achieve legitimate state interests--to protect minors from exposure to sexual offenses and victimization. The county objected to the APD reports because they detailed incidents occurring at Pease Park, a city park, rather than a county park like McGregor Park. Because the videotape related to parks other than McGregor Park and nudist practices not at issue here, Travis County also objected to it on the grounds of relevance. The district court agreed with Travis County and excluded the APD reports and the videotape as not relevant.

We apply an abuse of discretion standard to the question of whether a district court erred in excluding evidence. *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753 (Tex. 1995). A district court may be reversed under this standard only when a reviewing court finds that "the court acted in an unreasonable or arbitrary manner." *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). "A [district] ... court abuses its discretion when it rules 'without regard for any guiding rules or principles.'" *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998) (quoting *Alvarado*, 897 S.W.2d at 754).

When seeking to reverse a judgment based on an improper evidentiary ruling, a complaining party "need not

prove that but for the error a different judgment would necessarily have been rendered, but only that the error probably resulted in an improper judgment." *Alvarado*, 897 S.W.2d at 753; *accord Malone*, 972 S.W.2d at 43. To prevail, the party must demonstrate that "the judgment turns on the particular evidence excluded or admitted." *Alvarado*, 897 S.W.2d at 753-54. We review the entire record to determine whether a party has met this burden. *Alvarado*, 897 S.W.2d at 754. If any legitimate basis exists to support a district court's evidentiary ruling, then we must uphold the court's decision. *Malone*, 972 S.W.2d at 43; *State Bar v. Evans*, 774 S.W.2d 656, 658 n.5 (Tex. 1989) (citing *McCormick on Evidence* § 52, at 131 (3d ed. 1984)).

Rule 402 of the Texas Rules of Evidence states, "All relevant evidence is admissible, except as otherwise provided by Constitution, by statute, by these rules, or by other rules prescribed pursuant to statutory authority." Tex. R. Evid. 402. The rules define relevant evidence as "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tex. R. Evid. 401. In other words, evidence is relevant if it tends to prove or disprove any fact of consequence, thereby assisting the trier of fact. We have recognized that relevancy determinations should be left primarily to the trial court, which relies on its own observations and experience. *Corley v. State*, 987 S.W.2d 615, 618 (Tex. App.--Austin 1999, no pet.) (citing *Moreno v. State*, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993)).

Appellants maintain that the videotape was offered "to demonstrate the wholesome- non-obscene-nature of social-familial nudity that is referenced in the Mortons' affidavits" and "the extent in which the naturist movement has made an enclave into the American culture." Because these purposes are not at issue in this case, the district court could have reasonably concluded that the videotape did not involve facts of consequence and, as a result, was not relevant.

Appellants also contend that the Pease Park incident reports were offered to rebut the incident reports offered by Travis County "to establish that there were more reported sexual offenses at ... [McGregor Park], than other County parks." Given Pease Park's status as a city park, the district court could have reasonably concluded that these reports were not relevant because they have no bearing on how the rate of reported sexual offenses at McGregor Park compares to other Travis County parks. We conclude that a legitimate basis exists to support the district court's evidentiary rulings on both exhibits of summary judgment evidence and overrule appellants' second issue.

**CONCLUSION**

Because we conclude that both Travis County park rules are constitutional and that the district court did not abuse its discretion in excluding summary judgment evidence, we affirm the district court judgment.

Affirmed

**APPENDIX B**

**IN THE 201ST JUDICIAL DISTRICT COURT**
**TRAVIS COUNTY, TEXAS**

**NO: 95-11383**

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|---|---|
| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

FINAL JUDGMENT

On November 15, 1999, the court considered Defendant County of Travis' motion for summary judgment, Defendant Lower Colorado River Authority's motion for summary judgment and Plaintiffs' motion for

summary judgment. After considering the pleadings, the motions, the responses, affidavits, and other evidence on file, the GRANTS Defendant County of Travis' motion for summary judgment in its entirety; the court GRANTS Defendant Lower Colorado River Authority's motion for summary judgment in its entirety; and DENIES Plaintiffs' motion for summary judgment. It is there,

ORDERED, ADJUDGED and DECREED that Defendant County of Travis' Motion for Summary Judgment is hereby GRANTED.

It is further ORDERED, ADJUDGED and DECREED that Defendant Lower Colorado River Authority's Motion for Summary Judgment is hereby GRANTED.

Further, it ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion for Summary Judgment is hereby DENIED.

Therefore, it is ORDERED, ADJUDGED and DECREED that all relief requested by the Plaintiffs and all claims by Plaintiffs against Defendants County of Travis and Lower Colorado River Authority, Cause No. 9511383; styled *Central Texas Nudist, et al. v. County of Travis* is hereby DENIED. Summary Judgment is granted to Defendants and it is therefore, ORDERED, ADJUDGED and DECREED that Plaintiffs *take nothing* against Defendants Travis County and Lower Colorado River Authority.

It is FINALLY ORDERED, ADJUDGED and DECREED that, as all matters pending between the parties have been adjudicated, this is final judgment and that all relief not granted is hereby DENIED.

SIGNED this 15th day of December, 1999.

/s/_____
Charles Campbell,
sitting by assignment
Presiding Judge

APPROVED & ENTRY REQUESTED:

/s/_____
Sherine Thomas, Attorney for Travis County

APPROVED & ENTRY REQUESTED:

/s/_____
James Rader, Attorney for Lower Colorado River Authority

APPROVED AS TO FORM:

/s/_____
Pamela McGraw, Attorney for Plaintiffs

## APPENDIX C

THE SUPREME COURT OF TEXAS

Orders Pronounced May 3, 2001

. . .

THE FOLLOWING PETITIONS FOR REVIEW ARE DENIED:

. . .

01-0178 CENTRAL TEXAS NUDISTS, ROBERT A. MORTON, JR., and CHRISTINE A. MORTON, individually and as next friend of R.A.M., III, R.E.M. and C.G.M., minor children v. COUNTY OF TRAVIS and LOWER COLORADO RIVER AUTHORITY; from Travis County; 3rd district (03-00-00024-CV, RULE 47.7, 12-07-00)

. . .

## APPENDIX D

TRAVIS COUNTY COMMISSIONERS' COURT ORDER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

WHEREAS, on April 8, 1987 this Court adopted Park Rules, and revised them on August 24, 1993, and again in 1994, a copy of which is attached as Exhibit "A", for all Travis County Parks; and

WHEREAS, the Court desires to amend those rules:

NOW, THEREFORE BE IT ORDERED by the Commissioners Court of Travis County that the following rule be added to the "GENERAL, Minors, rules section, McGregor/Hippie Hollow: Any authorization or consent to the nude display of children and the nude display of adults with children present under the age of eighteen in this park will be treated as a violation of the law and park rules. Violators and parties to such violations will be investigated and prosecuted if possible.

BE IT FURTHER ORDERED, the Parks Department is directed to modify its literature and signs to

reflect these rule changes.

ORDERED this 11th day of July, 1995

/s/_____
Bill Aleshire, County Judge

_____
Samuel Biscoe, Commissioner
Precinct One

/s/_____
Karen Sonleitner, Commissioner
Precinct Two

/s/_____
Valarie Bristol, Commissioner
Precinct Three

/s/_____
Margaret Gomez, Commissioner
Precinct Four

## APPENDIX E

TRAVIS COUNTY COMMISSIONERS' COURT ORDER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

WHEREAS, on April 8, 1987 this Court adopted Park Rules, and revised them on August 24, 1993 and again in 1994, a copy of which is attached as Exhibit "A", for all Travis County Parks; and

WHEREAS, the Court desires to amend those rules;

NOW, THEREFORE BE IT ORDERED by the Commissioners Court of Travis County that the following rule be added to the "GENERAL, Minors, rules section: No person under the age of 18 shall be admitted into McGregor/Hippie Hollow Park.

BE IT FURTHER ORDERED, the Parks Department is directed to modify its literature and signs to reflect these rule changes.

ORDERED this 11th day of July, 1995

/s/_____
Bill Aleshire, County Judge

_____
Samuel Biscoe, Commissioner
Precinct One

/s/_____
Karen Sonleitner, Commissioner
Precinct Two

/s/_____
Valarie Bristol, Commissioner
Precinct Three

/s/_____
Margaret Gomez, Commissioner
Precinct Four

**APPENDIX F**

TRAVIS COUNTY COMMISSIONERS COURT
VOTING SESSION

ITEM 1
7/6/1995

COUNTY JUDGE
Bill Aleshire

COUNTY COMMISSIONERS
Samuel T. Biscoe (Not Present)
Karen Sonleitner
Valarie Scott Bristol
Margaret Gomez

JUDGE ALESHIRE: We'll call to order the voting session of Travis County Commissioners Court posted for 315 today to discuss and approve signage defining age restriction at Hippie Hollow Park and take appropriate action.

I understand we need to hear from the County Attorney on this issue and, Joe, if you want to join us.

COUNTY ATTORNEY ODEN: Judge, I'm here mainly to answer questions and to not take up any more time than is necessary to deal with this. I know you have

a long session that was planned and did not intend to deal with this.

You have before you a recommendation that I am making today to adopt a rules change that's within you discretion to limit the access to Hippie Hollow Park to only adults. I've had the chance to discuss this issue with some of you, and it's bee in public discussion over the last week, I guess, when we learned of the intention to conduct activities at the park involving children. There was some debate and I guess some continuing to debate on the issue of exactly what the involvement of the children would be and what would be the true character of the so-called poster contest that would involve children.

But it's clear to me, whatever the details of that is, it is clear under any scenario that there was an intention to invite, to encourage, and to include nude children in activities during these -- this week-long planned events.

It's my judgment that [that] behavior, if engaged in, would be illegal. And that's the part that, I guess, is my personal choice to -- or personal decision to make on an evaluation of the criminal law. But within your discretion are the issues of what policy judgments you would make. Even if it's not illegal, would you allow children to be nude in the park?

I think generally the long-standing acquiescence that the county has had in allowing nude sunbathing in that park, in my judgment, was never intended to be an acquiescence in involving children in any of those nude

activities. I understand there may be folks that disagree with my judgment on that and my recollection of it. I was here when we undertook a lengthy debate on what kind of sin gage would be put up there to allow people that didn't want to be exposed to nudity to know that it was practiced there and allow others this security to know that they wouldn't be prosecuted if they went there. But that only included adults, and that's the spirit of the proposed rule change that we've submitted.

I have a couple of my lawyers here today who are -- may be available for questions if they're more detailed than what I've been briefed on myself, lately; and we'll go -- only go into that as deeply as you want us to.

There is an alternative, I think you have, rather than banning children from the park altogether, an act that I thought was a fait accompli to begin with, and that is I never would have dreamed that anyone would have thought --
(318 p.m.)

COUNTY ATTORNEY ODEN: -- that the inclusion of children in the practices there at the park and the exhibition of children, especially in the events that essentially entice children to come there and encourage them and encourage adults to bring them there for those kinds of activities, it was an issue that I had never dealt with, either as a legal advisor to the County or from a prosecutorial analysis, because I had never understood that anyone would think that was legal.

There are, I think, detailed legal arguments that may be made in court some day soon if there's a challenge to this rules change, if you make it, or a challenge to any criminal prosecutions, if they occur, should anyone decide to bring children in the park for any of these activities that are planned.

And I believe I'm aware of those legal arguments and have considered them but I think, still, the bottom line is it is -- it would be a violation of one or more criminal laws to include children. And even if it were not a violation of those criminal laws, I think you have -- if, in your judgment, it's not good public policy to allow children in that atmosphere, that you have the authority under your contract with the LCRA in which you have assumed the custody and control of that park, that you have to -- the authority to make rules that, if approved by the LCRA, would limit access of children to this park and only this park for the reasons stated.

I have gone through lengthy discussions with lawyers for the folks who disagree with this and who intended to have the original poster contest and who believe it's all right to bring children into the park for nude activities. And I would say that I think the -- if there's an assumption that because this county has had a history of being fairly progressive in allowing adults to make their own choices about sexually explicit books and materials and other kinds of behaviors, including nude sunbathing at this park, that it is an incorrect assumption that that was ever intended to be any kind of acquiescence involving children.

In fact, the history of our juries and grand juries in this county and the history of prosecution and the history of management of the public spaces, I think, has been by that same group what you might call progressive members of grand juries and juries to be very protective of children. I don't think you'll find a stronger record in this community in their judgments of juries and grand juries on those kind of issues anywhere else in this state or in the country, for that matter.

And I also think, for those who think that the government shouldn't be interfering in the choices a parent would make about their own children as far as taking them out there, that although the rights of a parent are very broad, they are not totally unlimited, and there are some things that a parent might choose to do that the government can simply say, "It's against policy. It's against public policy to allow that." In fact, the government may go so far as to make it criminal to do some of those things.

And I think, if the spirit of what was intended with allowing nude sunbathing at Hippie Hollow became so perverted as to allow any kind of lewd exhibition of children, they would inadvertently end up killing the very thing that they say they want to protect, and that is maximizing the choices for adults in a progressive community. And in that sense, I think if we attempted to -- through prosecution or policy decisions -- to keep children from being exhibited in the park in the nude, if we failed at those attempts, then the next thing we should discuss is eliminating nudity in that park if you had to do that to

make sure that the children weren't exposed in ways that, in your judgment, would not be in their best interest.

That is not what I'm proposing now, and I think there's a middle ground that can accomplish both, and that would be to adopt both of the resolutions that are there before you. One relates to prohibiting the admission to anyone younger than 18, and the second would be an option to post signs, as necessary, to make that clear in the situation where someone happened to be in the park and had gained access, not through the gates where your park personnel could check IDs and things like that, that they would still be on notice by those signs that it wouldn't be legal to involve children in those activities that are planned. It would not be legal to bring children there and have them displayed in the nude.
That's all I have on it.

COMMISSIONER SONLEITNER: Ken, you used a word that I want to get defined. Would you please define the word "display"?

COUNTY ATTORNEY ODEN: Well, if I had my penal code, I would read to you out of there. But there are the -- the two statutes that I intend to generally draw attention to is -- one is a disorderly conduct statute that couches it in terms of exposing your genitals in a way that would be reckless as to whether or not you were doing it in a way that would offend or alarm another.

In my judgment, it would be impossible to expose the genitals of 4-year-olds, 7-year-olds, 9-year-olds, 12-

year-olds, 14-year-olds in a public park in activities such that are planned without being inherently reckless about whether or not others would be offended or alarmed.

Generally, the rule is you can't do that as an adult either without breaching that recklessness element, if you're in public. The -- and I guess what I'm saying isEven if you find a way, by the signage that is posted, to limit the recklessness of the adults on what they can anticipate would be reckless toward others, I don't think even with a sign you could eliminate recklessness in exposing children or involving children because it would be inherently reckless if you're looking at their best interest or at what others might -- the average member of this community would think if children could be displayed in that way.

Even -- I guess what I'm saying is when you choose the words "display," which is the word used in the statute involving harmful display of material to children, or "exposure" is the word used under disorderly conduct, or "lewd exhibition" is the phrase used in the penal code to describe sexual performance -- and performance doesn't just mean on stage. It means any involvement, any activity in which an adult consents or authorizes or allows the, quote, "lewd exhibition of children." That, then, if you're going to have those kind of activities, the only way to be legal is if someone said -- involving children, even in the nude and even in public, wouldn't necessarily be lewd. Then you have to decide what conduct is lewd and what's not, and that's a fact issue.

But what I would say is that if you look at the case law on it -- and that also comes down to judgments of your local grand juries, what's lewd and what's not -- it is theoretically possible to have, for example adult nudity without it being lewd -- art, different things like that. You can have nudity in your own home and not breach these kind of statutes.

But it is difficult for me to envision how you could have public displays of children in the activities contemplated, some of which there's no real certainty about what would occur. There's a discussion of a poster contest. The description of the plan for the poster contest didn't make it clear if the posters would be photographs or not.

The people who planned the event have advised me in discussions that they didn't intend to have actual photographs of children, but I think the reality is they did a nationwide solicitation for a children's poster contest that clearly intended to be -- to glorify nudity or to encourage nudity for what they call "body acceptance." And the bottom line is they don't really know what they get in response for that kind of solicitation. But even if they had intended not to have actual nude photographs of the children displayed or not intended to take photographs on site for the competition, they clearly did intend and do intend, if allowed, to have the children there nude, doing all those activities.

And I don't want to be too sanctimonious about this, either. I didn't solicit this issue. This issue came to

my office when park personnel learned about the intended use of your park for these purposes and these activities. And we were asked, "What do we do with this from a legal sense?" And the judgments I'm expressing today are the best legal judgments we could come to on both the legal issues and policy arguments made at the time.

I have sat before this Commissioners Court on prior occasions and prior courts and made legal analyses that allowed for the continued use of that park by adults, with full notice to the public that you don't have to be exposed to that if you don't choose to, and make it very clear in the signage. But I think, all sanctimony aside, you have an issue to deal with, and that isDid you ever intend and would you intend for the future for the park to be used in a way that would allow nudity and nude activities for children of any age below the age of 18?

JUDGE ALESHIRE: Ken, on the materials that we had prior to the meeting today, it was recommended that the Commissioners Court authorize a sign to be posted, based on your legal analysis that having children there engaged in these activities and exposed to adults who were in the nude would violate the law that we -- and I believe the posting for the action the Commissioners Court might take today in anticipation of events planned for this weekend, anticipated that we would approve a sign warning people, basically, that having children there at the park might be illegal.

The operative -- there was a letter that you sent last week, June 30th, to the -- apparently to the individuals

who were considering sponsoring the event. It seems to have the basic warning. Your last sentence said, "If children are displayed nude in public, exposed to adults who are nude in public, or displayed on posters in public or private, all individuals involved can expect to be fully investigated for possible criminal violations and prosecuted to the fullest extent of the law where possible."

I'm a little concerned by the recommendation received now, that in lieu of having the court simply put up a sign up there and warn people, this warning, in essence, might lead to prosecution, that we would actually make a rules change, whether or not we can do that now as opposed to Tuesday.

COUNTY ATTORNEY ODEN: The posting, if I read from it, "Discuss and approve signage defining age restrictions at Hippie Hollow Park and take appropriate action."

JUDGE ALESHIRE: Do you think approved signage? It does seem -- I agree with you that it does seem that we ought to take action. In particular, I'd say that if once we -- once we know that someone is planning to do something on County property, anywhere on County property, that is illegal in your opinion as the prosecuting officer, then it would be perfectly reasonable for us to put warnings up for them not to do that or they're going to get prosecuted; and I would support you on enforcing the law.

COUNTY ATTORNEY ODEN: Are you raising the issue about whether or not today you could also

[ap]prove the actual restrictions --

JUDGE ALESHIRE: A flat out --

COUNTY ATTORNEY ODEN: -- or the admission --

JUDGE ALESHIRE: A flat out change in the rule prohibiting anyone under the age of 18 from --

COUNTY ATTORNEY ODEN: Yeah. Under the -- the agreement that you-all have with LCRA, even that rule change, I think, then would have to be submitted to LCRA. So, I think probably what we're facing is that, for both of these, you may want to -- I believe, if you're talking about -- for example, the restriction on the park can be accomplished, essentially with a sign out front saying, "No one under" --

JUDGE ALESHIRE: Wouldn't we agree, we have the authority to do that this afternoon if we want. If approved by the Commissioners Court to put that sign out there, we could do that this afternoon without LCRA's agreement. It's not a -- it's a statement about what we believe the law to be and a warning.

COUNTY ATTORNEY ODEN: Yeah, I'm not sure if under -- I'd have to reread that agreement with LCRA, whether or not even signage changes are considered rules changes.

Do you-all know the answer to that?

UNIDENTIFIED SPEAKER: Not right away, but I can have it in a second.

COUNTY ATTORNEY ODEN: I think, what we're -- practically speaking, because of -- that if you agreed with the recommendations, both that we look at appropriate signage and notice change and restrict access into the park to adults only, that since part or all of it, before it became final, would require action by LCRA, that some of the events planned might happen before any of that became finalized, and for that reason, I would say let's just take that step-by-step like we would any other consideration and continue until that time to handle it just like we did last weekend, which is to hand the notice letters that you read from that doesn't necessarily make any sign change or any restriction in the admission policy until we have those details ironed out and until the LCRA approved it, if it's required for them to approve it, and basically work in the status quo with either handing out at the entrance those notice letters.

The effect of that, really, is to say we're notifying you that entrance into the park where any nudity is practiced, if you're bringing children into the park will be investigated and prosecuted, if possible; that if you then chose to disregard that notice, you would -- two things could happen. You could be arrested at that time and removed from the park and -- but you wouldn't literally be physically prohibited from entering the park.

It's my understanding that since we've done the interim notice that just came from me, not expressing a

policy decision on you-all's part, but just a notice that it would be the opinion of my office that it could be a violation of the law, I'm not aware of any decision to bring children into the park to challenge that.

The -- I believe the event that originally brought all this into public debate is planned for this Saturday. And I don't know, depending on what the process is for any part of this that would require it to be acted upon by LCRA, I don't know that they could do that by then. My guess is that they could not. So I would just say I wouldn't be concerned about when it could happen, because I think there's a way of dealing with it in the interim to control the situation.

In fact, I would say, even as to the signage, in the last two hours when we looked at the option of the original notice letter compared to what the real lawyers in my office came up with as a recommendation for a sign change in the limited time we've had to talk with Joe and his folks, I'm not sure that over the next day or two we might not come up with a better recommended language on the sign, primarily for this reason. I think if you do adopt the prohibition of children entering the park, the only real notice issue you have is whether or not they are brought there or enter from the lake, in which case, the notice coming from that direction and signage might be a little different.

But I guess what I'm saying is you may have to act upon this with clean-up language in the next week or two to modify anything you adopted today, and we'd have to

see what -- whether or not any part of it requires LCRA approval. But I don't think -- even if you decide to postpone action today until you determine those things, I don't think that nude activities in the park would go unaddressed.

JUDGE ALESHIRE: I understand that in your role, in your prosecutor role, that whether the Commissioners Court did anything at all, if this activity takes place, you may have grounds on which to seek investigation and prosecution on those cases, whether we had signs or not.

COUNTY ATTORNEY ODEN: Right.

JUDGE ALESHIRE: It would seem sensible for us, knowing that someone plans to do something that may violate the law, to put -- at least put the sign up and warn them. And, I don't know, did we find the answer as to whether we have the authority?

UNIDENTIFIED SPEAKER: Judge, there is no mention in the lease proper [of] any restrictions on you as far as signage. You've got an obligation to run the park reasonably and you've got an obligation to take care of that. I would think signs would come under that obligation. Proper signage.

JUDGE ALESHIRE: So -- and even subject to clear wording and placing, which we could leave, I suppose, to our staff to decide, it would seem that we can at least do that and do that before this weekend and try to

make sure that folks are at least on clear notice that they may be violating the law if they proceed with that plan.

But the -- I am, just on the basis of the standards that we've tried to use, uncomfortable voting for a rule that would flat out prohibit anyone under the age of 18 from being in that park. I agree with you that I didn't anticipate and we never had in our past discussions about nudity at Hippie Hollow any anticipation that it would have children there. And all of our discussions in prior Commissioners Courts has been on the basis of adults that were there.

But this posting --

COMMISSIONER BRISTOL: And that's basically been the practice. I think we should stress that.

JUDGE ALESHIRE: That's right. That's my understanding as well. And I -- but I'm just going that step further of adopting a rule today on the basis of this posting. I'm a little concerned that we might have posted it and say we adopt an order, we're changing the rule, prohibiting anyone from under age 18 from being admitted to Hippie Hollow Park. And that would be regarding whether they were clothed or not. And is it, under the penal code -- is it 18 or 17?

COUNTY ATTORNEY ODEN: It's under the age of 18. That changed recently. It used to be 17. It's now 18.

Under the age of 18 would be what would define --

if you're 18, it would be legal, if it's legal.

And the only thing I would say, Judge, is I think we would get to the same place with a sign out front, but even if you don't adopt the resolution saying "restricted -- restricting access," you can't -- you could take -- adopt a resolution to put -- to just change the sign, not saying we're restricting -- and I don't mean just change the sign with the verbiage in the example you have, but change -- put a sign out front that says not just that bringing children in, et cetera, but I could see it -- adopting a sign that would actually say -- express the intention of the court, that presence of children in the park is not approved.

I don't really think even that's necessary if you've got the kind of language here and we hand out the notice letters out front, then what you could do is re-post this for another action item next week, or something, if you wanted to make the final decision to prohibit entrance to adults only. And I wouldn't oppose -- making sure you got the posting, having been arguably very strict in our interpretation of whether -- or other governmental bodies on that --

JUDGE ALESHIRE: Well, and for ourselves --

COUNTY ATTORNEY ODEN: Yeah. That I wouldn't argue with your judgment on that and we could set that second issue of whether or not you restrict access to adults only, period, for a voting session next week or the following week.

I will tell you that I've been surprised to hear in discussions with the folks that were part of the organization that planned these activities that they believed that they -- people have taken children into the park before with some frequency, they say. And my response to that is, not to my knowledge, they haven't; and if they ever have, in my judgment it was never legal. And I would not count as credible the legal or factual claim that they have a right to do it now because they have done it on occasion in the past anymore than I would say it's a good excuse if you get caught burglarizing a house, that many times houses are burglarized without someone being caught at it and without being prosecuted.

If it's not legal, you don't make it legal by violating the law. And I don't think there was ever an intention to acquiesce in this, and I don't think that it's probably legal anyway. And I guess I would request the people who profess to have good intentions and to be law-abiding citizens but want to involve children in nudity, I think their challenge to us is that we shouldn't interfere with their personal choices, and I would say that I don't think your right to choose extends that far.

COMMISSIONER SONLEITNER: I wonder if there might be another alternative here, and that is that I suspect all of this is heading to court, and I'm wondering if we wait to see what the court says in terms of whether you get an injunction against you or however this resolves itself and whatever happens happens and we respond to it, and in the meantime this letter continues to be given out to everyone as they come in to Hippie Hollow. They may or

may not see a sign; but if you hand a piece of paper to every single person, putting them on notice, they are on notice that if they do anything, they might be prosecuted.

This is what has been, and I'm just trying to see if there's a way we can have it both ways, because I truly think that this is headed to court and it stays between the County Attorney's office and whoever it is that might want to try and challenge this, as opposed to us trying to act like a court, aside from a Commissioners Court, but a judicial court, or try to act like attorneys on legal issues that I don't feel comfortable discussing.

COUNTY ATTORNEY ODEN: Well, I think it is true that you have an obligation to wait and see if the criminal enforcement aspect of it would be successful before you would make a policy expression on it.

I would say a couple things on it. I think your -- I spoke to an attorney last week who was general counsel out of Denver, who apparently intends to challenge whether you take action or I take action or both of us took action in concert, to challenge any attempt to restrict the park for use for adults only.

I spoke again today to an attorney that I believe is working for the ACLU that says they are apparently considering and may have already decided to challenge any attempt to restrict that. I'm not sure. It's clear they are intending to be involved in some way. I would guess I would say, not as your local prosecutor but as your legal counsel, that participate in the discussions that led to you

taking a very unrestrictive approach to the exercise of control that you can make over your park. And I would say I wouldn't be intimidated by whether there's a lawsuit filed or 20 lawsuits or be concerned about it if you think it's clearly the right thing to do. And I would ask, I guess, if you're not sure it's the right thing to do, then to wait and see. But if you think it is in the community's best interest that you take the action today for a couple of reasons. I think it's good government.

And I'm not trying -- I'm not saying you're arguing with that at all, but I think we should make a clear statement when we have to face it, that it was not our intention, and make a clear record that the former acquiescence we've had for nudity in the park never intended to extend to this, whatever the court said, and the clear signal we send on that be unified.

JUDGE ALESHIRE: It would seem that -- I generally agree with taking a measured approach on this and do what we can to recognize the role that we have as a Commissioners Court and to respect the rights of our citizens and the role of the County Attorney as prosecutor. If the County Attorney comes to the conclusion that there is an activity, especially one that's specifically planned for one of our parks, that is illegal, some kind of notice ought to be given to folks, I think. I think we would be responsible --

COMMISSIONER SONLEITNER: They are. They're being given a sheet of paper.

JUDGE ALESHIRE: That we either give them this or even take the last statement and post it as the notice. The County Attorney has determined that -- and then that statement at the end of the letter, that if children are displayed nude in public, et cetera, that they'll be prosecuted.

That's not our decision to make as to whether or not they're prosecuted. That's rightfully the decision of the County Attorney as to whether to prosecute, and it's his decision as to what -- how to pull that into law. And then a real court with real judges will decide -- will decide those issues in the future.

UNDEFINED SPEAKER: Is it possible to hear these people?

JUDGE ALESHIRE: Yes. Yes.

But I do -- I would think that it would be appropriate for us to authorize some kind of notice to folks, given we didn't invite this issue either. We've got a set of facts here. Someone proposes to do something, the County Attorney says, "It's illegal." I think we respect the role the County Attorney has in that and say, "We need to warn folks that what they're proposing to do may end up having them prosecuted."

COUNTY ATTORNEY ODEN: Judge, I want to be -- read my letter that is handed out as a notice. In the 12 seconds I had time to draft it on that day that I learned about it and thought there were activities that were

planned for maybe even the following day, even in the short period of time, I was careful to say that they would be investigated and prosecuted, if possible. I think all of that will depend on the facts of the behavior itself, and I couldn't certify to you that any legal action I took would be upheld in court. I can certify to you that I think it's not legally allowed and I would take -- undertake prosecution in good faith, either under the disorderly conduct statue or the sexual performance or other statues, as -- depending on the facts.

But I do think in the same way that you're careful, and I appreciate to not attempt to dictate how those decisions are made, I want you to understand that I fully acknowledge that it's not my place to dictate to you how you make your policy choices on managing the park. I'm only sort of switching hats here to say, not strictly as your legal advisor but as someone who participated a number of years in the decisions that have given rise to how we do manage this park, I feel an obligation to speak against this because I think it is outside what was ever intended by the prior courts on it. And I would make the policy argument that you-all -- it would be a good thing to take a strong stand against it and create a clear record at your earliest opportunity.

JUDGE AL SHIRE: I think if there are folks --

COMMISSIONER SONLEITNER: Just one real quick question, Ken. How is this any different in terms of authorized consent? About the nude display of adults with children present, how is that different from an adult

allowing a child to go with them to an R-rated movie and there's nudity involving adults on the screen? How are these cases different?

COUNTY ATTORNEY ODEN: Actually, it's two separate statues, but they're not that much different in the sense that both statutes -- whether it's sexually explicit material, books and movies, et cetera -- draw a distinction between what is legal for adults and for children, even with adults' consent. In the sense that if -- for example, the harmful display statue we have in Texas basically says if you're going to see a sexually explicit movie, as you say --

COMMISSIONER SONLEITNER: I don't even think sexually explicit. I mean, there are so many R-rated movies right now that are mainly violent, but they throw in some nudity.

COUNTY ATTORNEY ODEN: Yeah. Well, but if it is -- has that sexual content but it's clear under the community standards established in any particular county that it wouldn't breach the community standards under the obscenity statute -- is it patently offensive, appeal to the prurient interest, all those things that you have to evaluate on an obscenity evaluation -- that this other statue involving children uses the same scenario but says that same movie, that same book that may be legal for an adult is illegal to be displayed to a child if it breaches the community standards for what is appropriate for children in that community.

In other words, the statutes draw a clear distinction and it's a different -- it's a different question. And, frankly, we haven't had many jury and grand jury verdicts on it, because when -- there was much more recklessness in our community about displaying sexually explicit books on the magazine racks right along with children's books. You don't see that now like you did then. And if you do see it, if it's reported, we investigate or prosecute. We've almost never prosecuted because even the folks who sell extremely sexually explicit material in this town legally to adults don't even try to do that with children because of the separate statue and, for the most part, don't even want to do that with children.

And so I guess what I'm saying is the analogy is the same, I believe, regarding the recklessness element and the exhibition elements in these other statues, essentially for the proposition that not only books and movies, the bottom line is, an adult can go see a sexually explicit movie in this community, but the same adult does not have the authority to bring a child to a movie that is determined by juries and grand juries to not be within a community standard for children in that community. It's a different standard. It's a different legal question.

JUDGE ALESHIRE: But if the -- and I don't -- and I think for the folks here who may want to testify today before the Commissioners Court, there's not -- there's not a reason to argue with us as to whether it's legal or not. That is a decision as to the prosecution. It's solely the decision of Ken Oden as County Attorney as to whether or not to prosecute, and it will be up to the court

system to decide whether or not that's valid. That is -- there's no point in us taking time to hear testimony about whether it's legal or not. We've heard our advice.

I think we can begin -- we don't get to choose whether it's -- that's not the role of the Commissioners Court, to choose whether or not it violates the penal code or not. That's not our role. Our role is, once given notice someone intends to do something that the prosecutor says is illegal, whether or not we want to give notice or change rules or do whatever we can --

COUNTY ATTORNEY ODEN: Yeah. I would even couch it slightly different, Judge.

You control and manage this park. I would say what's right for you to decide is, even if I'm wrong and it can be legally done, would you want it done in your park or not. That's what's in your lap to decide.

I don't -- I think most of this kind of conduct could breach criminal laws. It will depend in some part on how it's done and things on that, but that's (inaudible) judgment on my part. But if I'm wrong about that, you still, at the very same moment, at this moment, if there are planned activities like that, where we now have notice that people intend to -- that people will, I believe, in the coming minutes will come up here and tell you they've done it before, they intend to do it in the future. They think it's their right, and they think it's a good thing, and they don't want the government interfering in it.

I think -- and I think what you have to decide at that moment -- even if you didn't have a criminal justice system and you've got a right to run your park in a way you think is in the best interest of the community -- would you allow that or not? And give you my personal opinion, for whatever it's worth, and I've done that. Secondly, as your legal advisor, to say to you, if you -- contrary to what other lawyers may tell you, I'm telling you that you have the authority to restrict access of that park to adults only if you choose and if you think it's the right thing.

COMMISSIONER GOMEZ: So I'm understanding, this is illegal to do.

COUNTY ATTORNEY ODEN: In my judgment it is, But even if it's not, you then -- I think it's within your right to prohibit -

COMMISSIONER GOMEZ: But there's a law there that tells you that this is illegal to be done, and you would try it like any other law in court, just as you would tell us it's illegal for gang activity in some of our parks and we would take the proper action. Correct? And so even that would have to go to court and they would -- someone else would find out -- would find them guilty or not guilty.

COUNTY ATTORNEY ODEN: That's part of what I'm saying. What I'm saying to you as a court is something slightly different than that, and that isWhether it's illegal or not, it's within your authority to control. And it's -- it's in your lap to make a decision, whether we want it there or not, because they planned these activities.

JUDGE ALESHIRE: Okay. If we can -- we'll take testimony from anyone that wants to give advice to the Commissioners Court on this issue. You've had the advantage of hearing some of the discussion and then we'll return, Ken, to discuss this with you after we hear --

COUNTY ATTORNEY ODEN: I may take a seat down here at the end. If things come up where you want to ask me question.

JUDGE ALESHIRE: There's a seat right there and right here.

Terry, please come ahead.

And if you want -- look, we're going to -- what we'll do is anybody that wants to speak, there's two empty chairs, and if you'll -- anybody that wants to, just come on up and we'll take you.

COUNTY ATTORNEY ODEN: I think the importance is that Larry is the lawyer that had contacted me. They may want him here with them.

COMMISSIONER BRISTOL: Oh, sure. He can sit right here.

JUDGE ALESHIRE: That's fine. Certainly.

Hi, Larry [Terry]. If you would, please, just for the record, introduce yourself.

TERRY LIBERTY PARKER: My name is Terry Liberty Parker. I've spoken often before the court as -- on behalf of the Libertarians locally, and I'm also speaking now as a member of the board of directors for Liberty Action International. I'm on board with them too. If you're going to do it to them, you're going to do it to me.

What I've been listening to is -- borders on slanderous prejudice of people for their lifestyle practice. These people have a different religion from you. This is what it amounts to. They're not asking you to join them in that lifestyle practice, and I'm going to say Ken has -- Ken Oden County Attorney, has taken courageous stands on a lot of issues, so I don't want to attack him on any personal grounds like this. But the best of people can make mistakes. The best of people can be prejudiced and can be blinded by their prejudice and not be able to add two and two together.

What law -- what law says that parental consent means nothing? And that's what we're talking about. We're not talking about children going anywhere unsupervised to these places. We're not talking about R-rated movies that kids go to by themselves. An R-rated movie, by definition, is one where the parent has to be there. We are not talking about a merchant delivering, quote, harmful material, unquote, to a minor. We're talking about the adult having picked up the material and making the decision according to their own family values.

Are we to be clones of one another? Are we to have the Baptists in charge and then arrest all of the Methodists?

Is that our vision of government, that there is no more toleration and diversity, that we have lost it? Austin should no longer be known as the city that made it work, as the community that made it work. The community that made a civilized place, one that brought people here, intelligent people that stay here and make a fraction of what they would have made somewhere else. That's our community. It ain't perfect, but by golly it's a great place to be. And it's because people can be free. They can live their own lives. They can go to a church; they can go to a synagogue. They can be restrictive with other people who want to be restrictive in voluntary association. That's the First Amendment.

The interpretation that Ken Oden has made on the law says that it's illegal for an adult to bring their child -- a mother and father to bring their child with them to a public park where there's nudity, for that to be illegal means that all the private resorts, all the nudist resorts throughout Texas are also in violation of the law. And I'm sure if you pressed Mr. Oden on this, he's have to say he'd have to think about that one. Maybe it's true; maybe not. But there's no discernible difference on the criminal grounds.

I believe you've been presented with prejudice, and you've been stampeded by a few people in this town who try to pretend they speak for everyone. You know, the moral majority is neither. And they've got microphones. They've got talk shows. They've stirred a few people up to panic your officials.

They took something that was an event where kids were going to use crayons and marking pens to make posters and turned it into a parade of naked children before adults ogling their bodies to see which one had the best body so that they can make a photographic poster of it. That was the image that was presented to you-all at the beginning of this holiday weekend. And even days later, the watch commander, the sheriff's department watch commander was still under the impression that that's what the event was suppose to be.

Well, sure, under that kind of inflammatory imagery, people panicked. And that's easy to understand. People make mistakes. But we don't need to cement the mistakes in. We don't need to take our imperfections, our little prejudices, our little bias, our little misunderstandings, we don't need to cement them and permanentize them.

What I would ask the court to do is reject the legal theory that Ken Oden is presenting to you. I think he's well intended, but I think he's wrong. I think he's going to lose in court. I'm pretty sure he's going to lose in court, because I can't see how he could win this. And if he does win this, all the statements he made about delivery of harmful materials to minors left out a real important question here, the parents. It's the parents who make this decision. It's the parents who decide if they want to bring something home to educate their kids. It may not be the education you've chosen. It's the education they chose.

If this doesn't matter, then why do we bother in our

school system to ask for parental consent for sex education? Why do we bother? Because those kids don't belong to the government. They belong -- in America, they belong to the parents. It's up to the parents. Parents. We're talking about parental rights. We're not talking about the kids being put on exhibition for some sort of prurient interest. We're talking about the children accompanying their parents to the park for a day of fun in the sun.

Is it possible that there might be somebody that would leer at their body? Is it possible that that happens anyway at Zilker Park? At Pease Park? Anywhere? What are we going to do? Shut down the whole town because somewhere someone might be doing something vicious in their mind? Are we going to set up thought police?

Leave these people alone. Please don't harass them. This is the beginning of the summer. We all have better things to do. Ken Oden, Id sure, has better things to do, and so do you guys. Please leave them alone. Don't pursue this.

JUDGE ALESHIRE: Thank you, Terry. I must admit that if the criteria is whether or not to trust the correctness of the position from our County Attorney, I'd invest a whole lot in it, because they're rarely been wrong in all the years I've bee around here, so I mean there's some trust of that from my point --

COUNTY ATTORNEY ODEN: Judge, I appreciate that.

I do want to acknowledge, though, that I'm drawing a very clear distinction -- and that's one reason this briefing is occurring with the court. A clear distinction between the certainty of the outcome of any criminal charges in any case, this or any other cases, compared to the certainty of your right to control your park on a policy basis; and that's why I'm saying, to me, it's -- if we're talking about wasting time, it would be a great waste of time and resources to engage in a bunch of prosecutions to test it.

If you think, as managers of the park, it's not a good thing to allow children there and you have the authority to limit that and think it's consistent with the prior use of the park and the intentions in allowing adult nude bathing there, if you think those things, I think you arguably save a lot of that other kind of court activity and hashing out all those other things because I think that is a much more unassailable principle than any criminal charge that has to be proved beyond a reasonable doubt and all that.

The distinction I'd like to make on Terry's argument about being a choice for parents and that you can't do this or else all the private resorts, nude resorts in Texas would be illegal. The difference is this is a public park and you are in control of this land and the use of this land and the use of this water frontage and all that. You're not in control of those private places that are nude resorts.

And I would say to you, there may be some mass misunderstanding or -- one of us, either Terry or I, are

confused about the law. There seems to be a belief that if you are a parent, your rights toward even your own children extends so far that you could show them any book or any movie you choose in your own home. I think that's not true. I think there are things you can do with children, you can show to children, you can expose children to that probably even a parent doesn't have the authority to do.

JUDGE ALESHIRE: Thanks, Terry [Ken].

MR. FALLON (PHONETIC): I'm Larry Fallon (phonetic), and I have come on behalf of the American Civil Liberties Union because we're concerned about how this might affect a person's right to associate and to assemble. And I would at this point urge the court to probably slow down on this issue and give us a chance to explore it more fully so we can readily determine what our position is. This has just come to light. we discussed it yesterday, and then I just found out right before this court convened this afternoon that this was happening, so I came on over.

And one thing concerns me, when Ken Oden speaks about the possible criminal violations; and I think he points to the indecent exposure statute and the disorderly conduct statute. And in both those sections of the penal code, a person has to be reckless about whether another is present who will be offended or alarmed by the act. And I think we went through this. We've tried Hine Human's (phonetic) case about four or five years ago, and he was at the Tom Hughes Park, and I think Reverend Weaver was the only person that was offended or alarmed. And, of

course, we tried that to a jury and they came back within five minutes with an acquittal.

I think that at Hippie Hollow where you have signs posted clearly explaining to people that there is going to be nudity, that it's going to be very difficult under any circumstances for the County Attorney to show that someone is going to be reckless about whether or not they're going to alarm of offend somebody. I mean, if it were at Zilker Park or Barton Springs and somebody were to go nude, then you might expect that somebody there may not like that because they wouldn't necessarily expect it. But when you go to Hippie Hollow, you expect to see persons in the nude.

The only other section I could see that possibly could relate was indecency with a child. And there you have to expose yourself with the intent to arouse or gratify the sexual desire of someone. And, of course, that statute is a felony statute, so it would actually not be prosecuted by the County Attorney's office. It would be up to the District Attorney.

And, there again, in that regard, if people are out there knowing that everybody is going to be nude, or most people will be, then it's hard to imagine a prosecutor being able to show that somebody was out there with the intent to arouse or gratify someone's sexual desires. It's possible, I guess, that could be shown under some circumstances; but I think you'd really have to stretch.

The last thing, there's been discussion about

whether or not materials are harmful to minors. And I think my understanding is that that poster contest, if it does occur, is going to be not at the park and everybody is going to be clothed. You know, it's not an issue. It shouldn't be an issue.

But on the issue of materials that are harmful to minors, I'd just like to point out that about a year and a half ago, we tried the Infosex case here. Tyrell Johnson and Garrett Reese were charged with distributing materials that were harmful to minors. And in that case, the Infosex program, which is a two-hour program -- you know, there was a clip of three minutes that showed two males in explicit sexual activity on this video and was shown on television. A Travis County jury has ruled that that was not material that's harmful to minors. And that was explicit sexual activity. And so I think you'd really have to stretch to think that if some children were drawing posters that might show, somehow, nude figures on them, that that could be material harmful to minors. I think that's a real leap.

JUDGE ALSHIRE: Is there an issue in your opinion about children that might not -- children, being under age 18. That children, not accompanied by their parents, being at this park might be a separate issue?

MR. FALLON (PHONETIC): I think it -- I guess that's possible that that could be a separate issue.

COUNTY ATTORNEY ODEN: Are you going to make people bring, you know, birth certificates?

MR. FALLON (PHONETIC): I don't know, Ken. Like I said, I'm really -- I haven't -- these are the kind of issues that I think need further discussion and we need to sit down and talk about them before any action is taken. I just -- like I said, I found out about this meeting 30 minutes ago, 45 minutes ago. And I think that for us to explore all the possibilities requires a lot more thought, and I certainly haven't had time to do that.

JUDGE ALESHIRE: Well, is the Liberty Action event that was the poster contest -- in the release, I understand, it indicated that it would occur at Hippie Hollow. Is that not the case?

MR. FALLON(PHONETIC): My understanding is that it will not occur at Hippie Hollow.

COUNTY ATTORNEY ODEN: But the intention before this arose, before legal questions were raised was clear that it would occur there and the original solicitation had nothing in it about there would just be pens and Crayolas handed out to kids. It didn't make clear if it would be photographs or not, or if the kids would make photographs or for other -- and it was a national solicitation with that unclear -- without any certainty of what would be sent to you, whatever your intentions were. But I do think the uncertainty of the language, the folks I've talked to in the organization, I trust their representation that they didn't intend to -- I now trust that -- once they tell me, I'll believe them until somebody shows me that they're not speaking the truth. But I accept

their explanation that that wasn't their intention, but I would hope they would accept our good-faith concern about that, because it was so uncertain in the language.

But you still have the issue of whatever your intentions, if you're saying send us pictures -- send us entries for a children's poster contest in a nude week celebration that tend to indicate that maybe a lot of people would be thinking you send pictures of nude children.

MR. FALLON(PHONETIC): Sure. And I can understand that concern, and I think it points out that, I guess, people should be more aware that they ought to consult with lawyers before they -- in those kind of issues that can be a gray area. But unfortunately they didn't.

My understanding is now that that contest is not going to be out there.

JUDGE ALESHIRE: There's a couple of --

COUNTY ATTORNEY ODEN: We've already taken up longer than I had hoped.

But Judge, I will tell you -- I would disagree with any analysis that the Infosex case, although there were two charges that were considered, there was a decision by the jury to not convict on the harmful display because there were disclaimers up front, apparently, was the reason for the decision. But I would say much more importantly, they convicted on the higher offense with a higher burden of proof on obscenity in the same case. And it would be my

representation that I think if you read that as somehow that there was acquiescence toward exposure to children, you've misread the results of that.

In the Hines Human (phonetic) case, it was in a very remote area, and I think it stands just on its own facts, very similar to what Larry said, which is you can't go out looking for something to be offended by and they say, "I'm offended," and make the case in court.

JUDGE ALESHIRE: Okay. Thank you, Larry.

Yes, ma'am.

MS. MORTON: My name is Christine Morton. I'm the mother of three children and as a family we often go out to Hippie Hollow and we nude sunbathe. And I'm very protective of my children, and I wouldn't put them in an environment in which they would be hurt. They do not go out there to be exhibited. They go out there to have fun, and we do that as an entire family. I am offended by the prosecutor assuming that everyone that goes out there is exhibiting their bodies for everyone else to see. I mean, It's just not the case. We're out there because we enjoy being nude. We enjoy sunbathing. We enjoy swimming.

There are a lot of extremely nice people out there. A lot of good friendships have developed. And bad situations can happen anywhere, but I would never, ever take my kids someplace that would put them in harm's way or in danger's way. And I am really offended that somebody would tell me that I can't take my children

someplace and swim in a manner in which we've been doing for years because all of a sudden our morals aren't up to snuff with the rest of the community. I think we have just as good morals as someone else.

COMMISSIONER SONLEITNER: What reaction have you gotten when you've brought the kids through the park gates? Did anyone at the booth say anything about you can't bring kids in here?

MS. MORTON: Oh, no. We're not the only family. I mean, every time we go out there, there are a lot of families. I've been going out there for 20 years. For 20 years I've seen families with children out there. I mean, this is not suddenly something that everyone is doing. It's been happening over the years. As far as (inaudible) over the years. As far as I know, there has never been anything bad happen with the kids or to the kids out there at the park.

COUNTY ATTORNEY ODEN: Let me clear up a point on that. It's something approaching a 500-acre park. The fact that children may have gone in the gate before, I repeat, I was surprised to hear that. I would guess the Court might be surprised to hear that that may have been done, if there was any frequency to it.

But just getting past the gate, when you enter clothed, does not mean that every gate or park person would necessarily think those kids are going to be nude later. It's a 500-acre park. You can go to that park and go to many areas and leave your clothes on and treat it like

any other park.

The occasional situation where -- or, even a frequent situation with a particular ranger or a particular group of people, until they're instructed by this Court, they're not going to do anything or until it comes to the attention of someone that has the obligation or the authority to make an enforcement decision on it. The fact that someone has done it before is not probative of whether or not it's legal or whether or not you want to allow it or not or whether or not I could, in good conscience, fail to investigate it as a criminal case if I thought it could be.

If my judgment on that offends you, I didn't do it for the purposes of offending you. But I can't apologize for doing what I think the law requires me to do to evaluate the situation.

And you say that you are offended that someone makes a moral judgment. I have not used the word "moral," referring to the people who have chosen to do this in the past, here or anywhere else. I'm not saying you're immoral. If I were in parlor conversation with you about the judgments that you would make and what's good for your children, I might express my opinion to you, my personal opinion to you, but I'm telling you that whether you -- my opinion and your opinion agree or not, these people are managing a park that's within their control. And they have the obligation to make their best judgments about it. And they have the authority to do it whether you and I agree with it or not.

MS. MORTON: And their best judgment is -- does depend on what people have done in the past in a good environment. And the park rangers do, indeed, know what's going [on], because it's their job to walk up and down the rocks, completely from one end of the park to the other, on a regular basis to make sure that people don't have glass containers, because glass containers are prohibited for obvious reasons, they can cut people's feet. And they do, indeed, patrol the entire park so they know that there are families there and they know that there are children there nude.

JUDGE ALESHIRE: Thank you.

Yes, sir.

MR. STEVENS: My name is Gene Stevens. I'm the general manager of Liberty Action International. Apparently I'm the one that set this whole thing off.

We're a private, nonprofit, progressive, (inaudible) pro freedom research and education organization, and we're dedicated to providing a cultural atmosphere in which human beings, free in both body and spirit, can reach their full potential within a sustainable environment.

Let me just say one little thing. To preface, you know, my remarks as though not to make them too long, the County Attorney keeps referring to your park. It's not your park. It's our park. We let you manage it and we hire him too.

I thought, and I still think, my news release was specific in who it was directed toward. It was directed toward folks that already enjoy the nudist lifestyle, and it was directed -- it was designed to emphasize family involvement in social nudism. Social nudism in America has always been a family activity.

I can't imagine that we would want to turn Hippie Hollow into a adult sexual playground. That's not what I want in my county. I want a park where we have -- where our family values are respected and maintained.

Ms. Morton spoke just a moment ago about the park rangers. The park rangers have been very helpful and very diligent in maintaining a good atmosphere in the park. We had an event there last year in which we gave out free watermelons. We had seven children in our party at that time. We worked very closely with the park rangers to set that event up so that we could move our heavy stuff in there. We had a beautiful time. We swam. We enjoyed the sun. We talked to folks about our programs, and everybody went away happy.

When I sent this out this year, I had no idea that that wasn't going to happen again. Apparently, three dirty-minded folks on the radio got ahold of the thing and twisted it all around and got people to call in and put pressure on the County Attorney's office. And, naturally, when he gets a complaint, he has to respond to it.

All we ask for is that family-style nudism be maintained, that it be available to us in the county so that

we're not discriminated against and criminalized for doing something that has always been legal.

JUDGE ALESHIRE: Mr. Stevens, is the event that was originally planned in the press release that you put out?

MR. STEVENS: It will not occur at Hippie Hollow. It will occur on private property within the city on -- and clothed people.

JUDGE ALESHIRE: Okay. Thank you, Mr. Stevens.

Let me just announce, as far as our schedule is concerned, we have at least a one-hour-and-15-minute presentation that was anticipated for the work session that was originally scheduled at this time, so we will listen to anyone else that wants to speak, but we would ask you to be mindful that we are quickly running out of time to get everything done. And I'd also be glad to have my staff member back there go make copy of that if you want.

MR. MORTON: That's all right. I'll just read from it.

JUDGE ALESHIRE: Okay.

MR. MORTON: My name is Robert Morton. My wife spoke to you earlier. My family and I have enjoyed Hippie Hollow together for many, many years. And for that I would like to thank the Travis County

Commissioners Court, who have historically have shown good judgment to recognize that the people of Travis County are diverse. They enjoy a variety of leisure-time activities. Nude and clothing-optional recreation is just one of the many choices available in Travis County, to county residents. And if you'll look at the attendance figures at Hippie Hollow, you'll see that it's an enormously popular one.

I'm extremely concerned at the hasty and heavy-handed manner in which the County Attorney has tried to eliminate this option for my family. We go there often, and we had intended to enjoy a day there this coming weekend. But without inviting public comment or seeking to work with those who use the facility, the County Attorney has abruptly and unilaterally moved to deny our access to this public park.

The fact that Hippie Hollow has been used for decades by nude families, with nude children is simply beyond dispute. My wife and I have been going there regularly for more than 20 years and since before we had children. There were families there at that time. That was before the County took over administration of it. When we began a family of our own, we took our kids to Hippie Hollow. And just like most folks visiting there, we left our swimsuit at home.

We have three children, ages 14, 12, and 8, and they very much enjoy climbing the rocks and swimming in the water at the lake. They care enough about this matter that they're here today with me. Our frequent visits to Hippie

Hollow have become an important part of their growing up. These kids have learned body acceptance and an appreciation for the diversity of people that make Central Texas the special place that it is.

Stand up for me, please, kids.

Our eldest son, Robert, is a Boy Scout and a sophomore in the Science and Math Academy at LBJ. Our daughter, Becky, volunteers in the library, and she'll be entering the magnet school program at Kealing Junior High. Our 8-year-old son, Charles, is an elementary school student. He loves to read and he hopes someday he's going to be a major league baseball pitcher.

Now, these are the kind of children that you'll find with their families at Hippie Hollow -- happy and well-adjusted kids. And my wife and I are very proud of them.

Now, there is a tradition of family use at Hippie Hollow, and my family is part of that continuing tradition. But now the County Attorney is arbitrarily trying to prevent that traditional use; and he's trying to seek to justify his precipitous action by saying that in his 12 years in office he's never known that families bring their children to the park. And I find that to be nothing short of unbelievable.

You can go ahead and sit down, kids.

I think it's unbelievable when he says that he never knew that there were kids there, but I suppose that he

could point to the fact that his office was not aware of any arrests or any prosecutions at Hippie Hollow involving children. That may be true, but I think that that information should be telling us something very different. That information says that if there had actually been an actual problem there, you would have known about it. You would have been among the very first to know about it. Where was the problem?

Finally --

JUDGE ALESHIRE: Please, go ahead. We are listening.

MR. MORTON: -- you must consider that no responsible manager of a public park would wish to create an all adults, adults only type of a situation. It's the families at the park that help moderate the situation.

Do you really want to create an all adults, adults only, type of park? A park that excludes parents with children? This is exactly what the County Attorney has recommended that you do.

I encourage you to respect the tradition of the families who enjoy clothing optional recreation at Hippie Hollow, and I encourage you to respect the judgment of the parents who choose to include their children with them for an enjoyable afternoon of swimming and sunning -- sunbathing nude. Give parents like my wife and me a little bit of credit for raising our kids. We're not doing such a bad job.

I urge you to reject the suggestions of the County Attorney that anything different needs to be done at all.

Thank you for your time.

JUDGE ALESHIRE: Thank you, Mr. Morton. Is there anyone else who wants to testify on this?

We're here to approve signage defining age restrictions at Hippie Hollow Park and take appropriate action.

COUNTY ATTORNEY ODEN: Judge, since so many of these comments are directed toward me, I want to close --

MR. MORTON: And I'm sorry for that.

COUNTY ATTORNEY ODEN: Well, I assume they're honestly-held opinions, but I think they're misguided.

First of all, bringing your children here and showing them off as something that you'd be proud of seems to raise a question that no one is raising. I'm certainly not raising any questions about inappropriate behavior by the children. What's in question here is whether or not behavior of consenting or authorizing bringing children into these kind of events in which they are displayed in the nude is within the rights of a parent or whether -- even if it were, whether or not it's a use of the

park that you want to allow.

My bottom line is -- and as far as the suggestions that we came up and dealt with this because there were any calls to us or radio -- I haven't received a single call about this. I responded after we got information from our own park personnel and asked us for a legal analysis of it.

To me, I do not think the Court should allow these people, however honest their feelings are about it, to exploit the well-intended history of open-minded and nonrestrictive use of this park to not exploit that unrestricted use by prevailing on you to acquiesce in future activities involving children and the ones described or others that we may not anticipate. That unrestricted acquiescence in the well-intended and open-minded approach you-all have used for the park -- and your predecessors in office -- I don't think were ever intended to be -- include children. And I don't think you would be intimidated into allowing that use now.

JUDGE ALESHIRE: I must say that in the discussion -- it's been a number of years since we've had any discussion about skinny-dipping at Hippie Hollow, but there was a time when we had discussions about it quite often in Commissioners Court; and I thought this community had kind of processed that issue, as they say. And I repeat, I don't believe in any of the discussions we ever had back then that there was any discussion about children.

I can see the point from parents that not all nudity

is considered bad. It's -- and even the law, as we've had it explained to us before doesn't say that -- nude is not necessarily lewd. And I think we all, as mature adults, understand that. And it is possible, I suppose, for -- to respect parent's rights to make these choices for their -- with their children and for their children.

I guess until we solve the specific proposed order today, I was under the impression that what we were posted for was something of an emergency order was to deal with the pending situation this weekend. And if given more time, we might have -- we might have had more information or been better prepared than I feel like I am right now to deal with the whole policy issue and all the issues that may be involved and whether under any circumstances ever to allow anyone under the age 18 to go to that park is a broader issue than I was prepared to deal with today.

I was prepared to deal with the issue, based on the backup material that I did read before I came down here, and understood that given a decision that it was potentially illegal conduct that was about to occur. I recognize it's not my role to question whether or not that's the law or not. It didn't -- I really wasn't prepared to get into the whole policy discussion about Hippie Hollow again.

But if given that there was potentially illegal conduct going on, then I was quite prepared to come down here and vote for something to put visitors on notice that they better not do that unless they were willing to be prosecuted. And even after all this discussion I'm not --

personally not much better prepared to do anything other than that.

If - I'm uncomfortable about the posting as to whether or not we can change the rules, I didn't know we would consider a change of the rules, as such, as opposed to a sign to give people notice not to do this. With the statement that LAI is not going to have their event there this weekend, that helps take the immediacy off, I think.

COUNTY ATTORNEY ODEN: Judge, I'd draw your attention to the fact that my understand of that representation is that particular event wouldn't -- apparently, is not presently intended now to occur; but there is still intention, and unless you take some kind of -- make some kind of policy decision today, to bring groups of children, if they desire, into the park for other activities for what they call National Nude Week. Those activities may be disclosed, may not even be planned yet, but I'm saying there's something separate to deal with there other than the single first poster issue.

JUDGE ALESHIRE: Okay.

COUNTY ATTORNEY ODEN: And I would say --

JUDGE ALESHIRE: If there's two issues there, Ken, one would be a policy question that is raised by the proposed order about whether or not we ought to prohibit anyone under the age of 18 from being there at all, period. And that really is a policy question. I'd feel more

comfortable with a better posting, giving an announcement that we were going to consider that.

But then there's another issue as to whether or not any of that other activity, the one that was planned or any other one -- in fact, even activities that have gone on in the past, if you feel that there is activity that you or the DA would possibly prosecute that is going on out there, I'm comfortable voting for some kind of warning to folks today that that is the case, because I can understand how over the years there hasn't been a lot of complaints about Hippie Hollow. It has been -- it's well run by our staff and well managed, and the public seems to have been at ease with it. I think a very poorly worded press release and perhaps a bad idea about how to use Hippie Hollow has provoked this now back into a full-fledged reassessment.

COUNTY ATTORNEY ODEN: Well, Judge, what you'd be saying, then, is you make -- to make a decision today on the signage but until we post it for an action item, say, next Tuesday or the following Tuesday, it would be that time when you would have it right to make another decision about the actual restricting of that. And I don't quarrel with that analysis at all.

The only thing I'd say is, because of the open meetings regulation on the wording of the action item, but I would say to you, there's really no reason to postpone any restriction on allowing children there at all unless you want to send the signal that you may in the future consciously intend to allow children there.

If you do intend to do that, then I think we need to go forward in that debate. But if you know for sure that it was never and is not now your intention to allow children in that park, I think --

JUDGE ALESHIRE: I'd want to hear a lot more discussion.

COMMISSIONER BRISTOL: Me too. I'm not ready on that one.

JUDGE ALESHIRE: Ken, I'm willing -- I'm willing to tell you that I don't consider all nudity to be bad or all nudity between parents and their children to be bad. I don't -- I respect that there is -- if not some legal principle, then at least some understandable principle that parents ought to be in charge of their children and make these choices. But I'll stop there. I won't go further than that. I'll say certainly if there is behavior beyond just the question of nudity that is illegal, then let's not -- it's not a question for me. Prosecute it.

COUNTY ATTORNEY ODEN: The additional element here that I'm talking about. I agree with everything you just said up to the point where you say "and in public." That's where the legal distinction is, even if you don't have any other activity other than nudity, because the general principle is you don't have to a right to be -- even adults don't have a right to be nude in public. And if we're saying we're going to actually create a situation to try to make what is otherwise always illegal, and that's nudity in public, we'll make it legal in this park

because of the signs we've put up, now we're saying we will take what is illegal, except for the action we've taken to make adult nudity legal, we will now say we would consider under the right situation making that illegal behavior legal for children also.

JUDGE ALESHIRE: Well, Ken, otherwise, we'd have to decide right now on the basis of no more discussion and no more time to process this issue today, that there isn't any possibility under which we would ever consider allowing anyone under 18 in that park, and I'm not personally prepared to go that far yet.

COUNTY ATTORNEY ODEN: Okay.

JUDGE ALESHIRE: That, yes, there might be some circumstance under some way where that might not be the best rule and policy to have and would feel better if we immediately told our natural resources folks to post a sign there that says, "NoticeAny authorization or consent to be nude display of children and the nude display of adults with children and the nude display of adults with children present under the age of 18 in this park will be treated by the County Attorney's office as a violation of the law. Violators and parties to such violations will be investigated and prosecuted, if possible."

COMMISSIONER BRISTOL: That's an accurate statement of the fact. Right?

COUNTY ATTORNEY ODEN: Yeah, but it doesn't speak to your decision. I guess --

COMMISSIONER BRISTOL: No, it doesn't but we're not really posted to do anything more today than put up a sign, and this meets that.

COUNTY ATTORNEY ODEN: I'm trying to clarify, is it you-all's -- then, since you would consider this, maybe there -- you would consider allowing children nude in the park later. And since you're not posted for that action now, are --

JUDGE ALESHIRE: Ken, there's a lot of considerations --

COUNTY ATTORNEY ODEN: Let me finish my question. Let me finish my question.

Would it be your request of me to come back with an action item on this for you to decide that in a week or two or not?

COMMISSIONER BRISTOL: Do we need a full court?

COUNTY ATTORNEY ODEN: Do you see what I'm asking?

(inaudible)

JUDGE ALESHIRE: We've got a subcommittee for transportation and natural resources, and I think it is a

big policy issue. Is there any nudity of children in any of our parks? There sure is. There sure is. I've seen little kids running around nude in City parks.

COMMISSIONER BRISTOL: There is a subcommittee --

JUDGE ALESHIRE: I mean, it's not a policy question, but is that to be -- does that mean that the park has to have folks --

COUNTY ATTORNEY ODEN: Yeah, but you're, I think, glossing over with that comment, Judge, the fact that --

JUDGE ALESHIRE: Ken, I'm not casting a vote today --

COUNTY ATTORNEY ODEN: Let me finish my sentence. Let me finish my sentence.

JUDGE ALESHIRE: -- on a policy question.

COUNTY ATTORNEY ODEN: I'll let you finish yours.

That kind of comment taken out of context with the fact that this park invites nude adults. Some are parents, some are not parents. Most in that park -- the other place where you say a child, you know, takes his diaper off and is run around the park, who cares? It's not illegal. Never has been, never would be.

But what I'm saying isIn the context of where the decisions you've made for adult nudity, strangers and parents alike in that, and apparently if you allow children, they can come with their parents or not with their parents. This whole idea of parental consent is a little moot. If you're going to let children in, you don't know if they're with their parents or not.

JUDGE ALESHIRE: But it's not moot from a policy standpoint as to whether or not it's parents.

COUNTY ATTORNEY ODEN: Okay. But what I'm saying is -- I'm trying to clarify. If you-all want to consider that, then it will be an action item that we would bring forward in the next week or two.

And I guess what I'm saying is I'm a little amazed that what I've seen from prior courts that, in my judgment, this is my personal judgment, would never have considered allowing unlimited access of children into Hippie Hollow where there was unlimited nudity by adults and the way it's practiced there. That, if we're going to consider that, I'm going to urge you, not as your legal advisor but as another official that has to deal with those things, to not approve it.

COMMISSIONER BRISTOL: Ken, I think your posting that we are under today does not allow us to discuss that issue in any more detail. I think it will take a lot of time to really look at it in a policy position. I want to do that thoughtfully and intelligently.

I appreciate very much your opinion. But I think today our only action that we can take is just to put up this notice to support what you've said, for us to give more time. We do have a subcommittee that works with our parks staff, and I'm on it. I'll welcome looking at it with you. And today I move approval of the posting of the notice of the signs as read by Judge Aleshire.

COMMISSIONER SONLEITNER: Which, for the record, is amended to say "will be treated by the County Attorney's office." We've added those words.

COUNTY ATTORNEY ODEN: I wonder why you did that.

COMMISSIONER BRISTOL: Because that's what you said --

COMMISSIONER SONLEITNER: To make it real clear to folks.

COUNTY ATTORNEY ODEN: Well, that was not my proposal.

JUDGE ALESHIRE: Let me try to be clear with this.

Look, how we process an issue here and how we deal with an issue here depends on what kind of advance notice we've got and what advance notice we've given other people.

My understanding of this issue walking in here today, was -- and having read the paper and read the backup material -- was that what was proposed to be done there was illegal from your point of view. And I don't question that. I trust you. I respect your opinion. I respect your staff and their ability to know what the law is. You've done it so well so long. I don't have -- there's no -- there's no reason for me to argue with it, and we also, as the Commissioners Court, don't have a position to argue with what is prosecuted and what is not.

If -- that's what I was prepared to deal with and to put up a sign that warned folks that what they were proposing to do might be illegal and they could be prosecuted for it. If it's a broader issue than that, number one, we ought to post it to let everybody in the world know, both sides, all sides in this community know we're going to reopen this issue about Hippie Hollow.

To the straight-up question about whether I could imagine ever condoning or supporting a situation whether there would be anyone under the age 18 in that park, I tell you, I'm not ready to decide that on the basis of what all I've heard today.

COUNTY ATTORNEY ODEN: I'm not urging you to do that. I'm trying to clarify from those comments -- you-all seem to take my comments at this stage --

JUDGE ALESHIRE: We tend to start arguing like we really don't mean to be. I respect what you've said.

COUNTY ATTORNEY ODEN: Then let me finish.

What I'm saying isIt seems to be in you-all's response that you seem to think I'm disagreeing with your bifurcating that, and I'm not.

COMMISSIONER BRISTOL: Okay, Good.

COUNTY ATTORNEY ODEN: But -- because I think you're right on the posting element.

But I'm trying to draw attention to the fact that the comments you've made in the process, I do think, honestly, puts us starting from a different position, in that I can clearly say I didn't see that as ever an intended use of the park. And I will be bringing back an action item to you, whether your other County committees and stuff bring it back or not, pretty quick to get an idea about what you-all think about that.

COMMISSIONER BRISTOL: Okay.

COUNTY ATTORNEY ODEN: Because I would like, from that end, as your civil lawyer, if we're going to take any action, to know.

COMMISSIONER BRISTOL: All right.

JUDGE ALESHIRE: Sure.

Did you second that?

COMMISSIONER GOMEZ: (Nods affirmatively.)

JUDGE ALESHIRE: Any other discussion?

Those in favor of Valerie's motion?

That passes unanimously. Thank you.

Valerie moves that we adjourn.

COMMISSIONER BRISTOLRecess or adjourn?

JUDGE ALESHIRE: Adjourn.

COMMISSIONER BRISTOL: Adjourn.

JUDGE ALESHIRE: And seconded by Karen.

Those in favor?

That passes unanimously and we're adjourned.

(ADJOURNED AT 449 P.M.)

TRANSCRIBER'S CERTIFICATE

I, Jill A. Weiler, court-approved transcriber, certify that the foregoing is a correct transcription from the tape recording of the proceedings in the above-entitled matter.

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**APPENDIX G**

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TRAVIS COUNTY COMMISSIONERS' COURT
ITEM A-3

COUNTY JUDGE
Bill Aleshire

COUNTY COMMISSIONERS
Samuel T. Biscoe (Not Present)
Karen Sonleitner
Valarie Scott Bristol
Margaret Gomez

(400 P.M.)

JUDGE ALESHIRE: That leaves us with the last remaining item. Let me point out we do not need to have the road district meeting. There are no claims or investments.

The last item for the Commissioners Court to consider is Item 83, to approve an amendment to park rules regarding, one, access to McGregor Hippie Hollow Park by children under the age of and, two, other regulations relating to control and signage in McGregor Hippie Hollow Park.

We have received in executive session advice from the County Attorney on the legal issues involved in this, and I would request at this time--if there is no objection from the members of the Commissioners Court--that we allow Ken to explain in public the legal issues as he sees them, both as our counsel as well as and in his simultaneous role as prosecutor.

I would only mention by way of introduction on this issue that I was on the Commissioners Court when this was last an issue before the Commissioners Court about Hippie Hollow. At the time there was litigation going on about an individual who had been skinny-dipping at another park nearby but not at Hippie Hollow. There were suggestions at the time that there had been skinny-dipping at several county parks, and part of the policy rationale that the Commissioners Court used at the time was that it would be best to recognize that, while there had been skinny-dipping at Hippie Hollow for many, many years, that people -- that we would post a sign so that folks wouldn't be terribly surprised if they found nudity at that park. There was no discussion at that time, back several years ago, about there being children there. But there was a discussion about nudity there. And, in a sense, we felt that it would recognize that Hippie Hollow was a place where skinny-dipping occurred, but we didn't expect there to be skinny-dipping at other parks as well.

And with that additional little piece of historical information, I would -- if you-all -- if it's okay with the

Court, allow Ken to explain what he considers the legal issues and legal conclusions that he's reached.
Ken.

COUNTY ATTORNEY ODEN: Judge, I'm going to be very brief to start with, only to say that it is my recommendation today that the court takes action to limit this park's access in the future to adults, 18 or over. I will be available to explain that in as great a detail as you can stand to listen to, I guess.

Most of it, I think, has been explained last week when we met. I do recommend the adoption of both orders that you have here today. And that would be the primary, most important change, and that would be a complete ban on the use of this park -- as long as it is a nude park, a complete ban on allowing children there.

The bottom line, without going into a lot of detail, is that I believe that's illegal under the penal code; but it becomes much more clouded if the Court doesn't take an affirmative step to say that they do not intend to allow -- acquiesce in that in the same way they have in the past acquiesced in the use of it as a nude beach for adults. If you do, as a Court, acquiesce in it, then it introduces defenses for violators called a justification defense, and it puts me as a prosecutor in a very unusual position, a very unattractive position, of having to consider, as we did in the ACTV case with the City, whether or not we can enforce the law without actually holding the government accountable also under the same law if the government has the authority to

control the use in that regard and refuses to do so, especially in a situation where the government has the ownership or management rights and not only allows it, but actually takes money for it and makes a profit for the doing of the action that might otherwise be illegal.

I am saying this publicly to you now after our discussions in which you--I would represent to the public--have encouraged me to publicly discuss this. I am concerned that I do not want to create the impression that I am trying to force you to do something you don't want to do or that you or any other member of the community, even those who disagree with me, have any less concern about the exploitation of children than I do. I know you are all equally concerned about that, and I would guess that most of the families who have -- may have done this in the past, even if I disagree with it, are not inherently dishonorable people and I'm sure they care about their children.

But I believe that the basic law is it is illegal and especially reckless where it involves children, and there are a number of laws applicable to this kind of conduct, whether it's sexually-oriented businesses or exhibition of nudity or lewd conduct or even delinquency statutes involving children, that makes it very clear that there is a different legal standard that applies in these situations to children as opposed to adults. I think that makes good sense. I think we ought to be mindful of that, and I think if we want to maintain Hippie Hollow as a legally-operating beach, as it does now, we put in jeopardy that

heritage of openness out there if we complicate it by saying we can now involve children in it.

I don't think it's an issue that we consciously avoided, but we never really dealt with it before. And I think I could not in good conscience fail to prosecute, to investigate and prosecute, if possible, any of that kind of public nudity if it was indiscriminately involving children or exposing it to children. And the courts -- it will be up to the Court to make its own judgment of how it handles the policy issue; but I would not, for my part, want to see the openness and the tolerance that this community has shown in the past to be confused and exploited by showing no real concern for the special aspects of this that apply to children. And I don't think the tolerance of the past was ever intended to allow the inclusion of children for these kind of activities.

Basically, if it's legal for children to go there as an accepted policy, not something that's occasionally happened without anybody knowing about it or discussing it or dealing with it as a policy, if you do that, the very kind of event that was proposed last week that brought -- or the week before, that brought all this to public debate, and that was a children's poster contest. If it's legal to have children there, they can come with or without their parents. Even with their parents, they are then exposed to nudity of people who are not their parents. They are available to be photographed without any ability of you to control it and without any ability by you to control the use of those photographs. If they're in public like that, it's totally legal for them to be

photographed and they have little or no control of its use.

Where you are, by a policy, allowing that, you could stop it, but you consciously -- now that we have to consider it, it having been brought up by the proposed events last week, I'm concerned that if you did acquiesce in it or adopt it as a policy that you would allow it, the the potential consequences of that will be consequences the Court has never considered.

For all those reasons, I would recommend that you express by your orders that are proposed and that we drafted and placed in front of you, changing the park rules to reflect that no person under the age of 18 will be admitted to McGregor Hippie Hollow Park and that it will be part of the park rules to express any authorization or consent to the nude display of children and the nude display of adults with children present under the age of 18 in the park will be treated as a violation of the law and a violation of park rules.

Basically, this stands for the proposition that there is a distinction between children and adults and how the park could and should be used without eliminating the prior use of the park as a place where people can go to nude sunbathe if they are adults.

JUDGE ALESHIRE: All right. There are defined roles in the County government of the officers. The County Attorney is the prosecutor and our legal representative. The County Commissioners Court has

rule-making authority about parks, but we don't have anything to say about the prosecution of crime. That is clearly the prerogative of the other elected officials who are charged with that responsibility.

And I mention this because this is a forum for the Commissioners Court to decide what it should do within its realms of authority, which is in this case to consider making park rules and designating what signs would be up. This is not the forum to argue what is or is not a violation of the penal code. There are other forums for that, and that is a matter that I respect as the authority of the prosecutor to decide who to prosecute, for the courts to decide those cases.

So, as we hear from the public today, I'm going to ask you to confine your remarks to the issues that are before this Court, which is given the assumption that the County Attorney has indicated he would prosecute, could prosecute for these violations of the penal code. Now the question isGiven that assumption, what is appropriate for the Commissioners Court to do? And we have specific recommendations that we prohibit everyone except adults from Hippie Hollow Park and put the sign up with the amended wording that Ken read.
So, please be advised that as you give us testimony, if you begin to argue with the County Attorney about what the penal code says, we'll invite to you stop that testimony before us today. There is no point in us hearing that. That is something you-all can take up with the County Attorney in some other forum than this.

And, Ken, anything else you want to add?

COUNTY ATTORNEY ODEN: No sir. If issues come up that I'd like to speak to, I guess I'd ask later.

JUDGE ALESHIRE: Okay. We'll take anyone's testimony that wants to come forward. Please just come forward and have a seat, introduce yourself, and – Hi, Ruth.

MS. EPSTEIN: Good afternoon, everybody. I'm Ruth Epstein. I am president of the Central Texas Chapter of the American Civil Liberties Union, and I'm glad of this opportunity to speak to you.

I won't argue with Ken Oden about whether -- what his interpretation of the law is; however, I would expect him to give the exact law that he considers to be -- to apply. I have looked at the penal code, and our attorneys have looked at the penal code, and we did not see any particular section that seems applicable. So I think, without arguing with him, we could ask him just which section does he think applies.

COUNTY ATTORNEY ODEN: Well, I would say the disorderly conduct statute is the primary statute that is used to enforce the prohibition against nudity in public. It's the statute that would keep you or I, Ruth, from walking outside the County building here and taking our clothes off at 11th and Guadalupe. It speaks to recklessness about exposing your anus or genitals.

And the other relevant statutes -- I think there's another statute that speaks to prohibiting the lewd exhibition of genitals for children and makes it illegal for adults to authorize that and makes it specifically illegal for parents to consent to that. The fact question there that, in addition to what's under disorderly conduct -- that's a higher violation, and that would apply if the exhibition was not only just nude but was determined to be lewd in some way. And that's a tricky factual distinction where the situations or the events show you've moved from simple nudity into behavioral or positions or different things like that, activities that would make it lewd.

The other statutes that involve is there's a statute involving the contributing to delinquency of minors. And when you look at the definition of "delinquency," it is very broad and subject to a great deal of debate by debaters such as you and I. But I do think it could apply.

For my purposes, the statute that I think is most applicable is the disorderly conduct statute, the BOC Number 12, I think it is.

MS. RUTH EPSTEIN: Thank you. I'm not an attorney, but I do know that nudity itself is not lewd and that nudity is different from behavior. And I believe that would be the basis of our legal objection, but I will leave that to our lawyers.

Let me make some general comments. The Civil Liberty interest in this situation, of course, is what we

believe that the government--in this case the County government--is interfering with parents' rights. And a general Civil Liberty position is that if the government isn't needed, stay out of private affairs. And we feel this is a case where parental rights are being interfered with. We think children should -- parents should control their own children.

And then there's a cliche which I think applies very well, and that is -- this isn't particularly civil liberties, but I think it would appeal to all of us; and we've all heard, "If it ain't broke, don't fix it." I don't know that there has been a problem. I believe there haven't been complaints about children being nude at Hippie Hollow with adults, I haven't heard of any complaints. So, why are we trying to fix something that doesn't seem needs fixing?

And my third point is I have been a member, and active member, of this community for a long time, and I'm proud of our community diversity. We have a reputation for being tolerant, diverse. We are a liberal community in a much more -- we are more liberal than the rest of Texas. We have a reputation for being tolerant of attitudes and behavior that is different from the rest of the state but still legal.

And without being overly personal, I think the proposed rule here is an attempt to introduce, perhaps, your personal morals to this community which has so far exhibited a different moral standard. We tolerate diversity. Some parents like to -- you know, parent bring

up their children differently. I personally have never gone to a nudist place, but I respect other parents' desire to bring their children up with an appreciation of the beauty of the human body and not to be ashamed of it and not to think "adult" means "dirty," and "adult only" could lead to a degradation of the activity that is at Hippie Hollow. I believe that the presence of children enhances the family value of the place. And once children aren't there anymore, the atmosphere will change. I think your family activities enhance the good things about Hippie Hollow.

And, lastly, I would like to tell you that the ACLU is watching this situation. We are very concerned. We don't -- we don't like we don't like government intrusion into private lives. Sometimes it's necessary, of course; but we don't believe this is one of those necessary times.

And, lastly, I think that the suggestion that although it may not be absolutely illegal, you could foreclose the opportunity to have a legal opinion, another legal opinion guide you. You could foreclose that opportunity for you to respond to another legal opinion by making a rule as Ken Oden suggested, then it doesn't really matter whether the activity is legal or not. And that's what he's asking you to do. He's asking you to make a rule, and then it doesn't matter whether it's legal. But I believe we should give people as freedom as possible that is consistent with legality, so I ask you not to pass that rule.

JUDGE ALESHIRE: One clarification. You mentioned parents.

Ken, as I understand the advice, whether children were there with their parents or children were there without their parents wouldn't make any difference as far as your interpretation of the application of the penal code. Is that –

COUNTY ATTORNEY ODEN: I think it would be another factor, but I think it is illegal under either scenario where they're in public and exposed to others, not family members, in a public place. That even if the parents were present, it could be an would be illegal unless government does something as I've described, so to provide them with defenses that they wouldn't otherwise have.

I'd like to speak very briefly to a couple of points, and I assure you, Ms. Epstein, that I appreciate the spirit of you disagreement and the concerns raised. I think in some places when the ACLU comes forward and says, "We disagree and we're thinking about suing you," that's considered a badge of honor. It is not considered a badge of honor by me. I think the ACLU has an honorable heritage of sticking up for individual rights, and I don't intend to impugn that, even though I strongly disagree with this.

The aspect bout a parent having a right to choose this without governmental interference, I think, is a valid issue to raise, but misplaced in this fact situation because

it implies that the government is prohibiting a parent from openly practicing nudity with their children if they choose to. They can still do it in their homes where all families make those choices. They could even do it in open situations, nude resorts and things like that on private property.

What we're discussing here is whether or not they can use a publicly-funded park, publicly owned and publicly open, for the practice of those individual things that are generally illegal in every other public place. That's the distinction I would make. And on the issue of "if it's not broke, don't fix it," to me, if we don't make a clear policy choice on this -- the poster contest that was announced last week, it was rapidly changed and there was a backing away of that, and it was sort of redefined and then, I guess, stopped altogether.

The problem isI believe if we don't make this a clear provision like I'm proposing, that poster contest would be legal. And if that poster contest is legal, including photographs if the chose to, something is broken. Something would be happening that was never intended. And I want to tell you, if the Court chooses to not have other debate with me the legal issues here, it's there choice, not because I demanded that. And I have actually told them on many of these legal issues, accounting for the fact that I may have a personal bias in this, that it would not offend me at all if they seek other counsel on it and discuss it. But all I can do is give them my best judgment on it right now.

JUDGE ALESHIRE: In the interest of time, I was confident that Ken would debate this to the end of the earth if we get into it, but there's not much point in doing that before the Commissioners Court with any of us.

MS. EPSTEIN: Thank you.

JUDGE ALESHIRE: There's two seats up here. If there's someone else that also wants to testify, let's keep the seats filled, and we can move this along expeditiously.
Good afternoon, Terry.

MR. PARKER: Hi. Summer colds.

My name is Terry Liberty Parker. I've spoken to the Court on this issue over the years, going back in the middle '80s, spoken on behalf of myself as a human being and on behalf of many other people who probably would not agree totally with all Libertarian agenda but who do agree on this issue, that people should be free as they can, consistent with keeping a peaceful and orderly society.

This is one of many copies floating around of the September 1st, 1987, County Commissioners hearing.

UNIDENTIFIED SPEAKER: Oh, my goodness.

MR. PARKER: I don't know if your media goes back that far, but this is the hearing -- or this is the

meeting where Mark Weaver attended, and he wanted to do a slide show. Do you remember?

JUDGE ALESHIRE: I remember it very well, Terry.

MR. PARKER: And he had gone down there and taken slides of the -- of what was happening at Hippie Hollow. And he wanted to –

COMMISSIONER SONLEITNER: I was here myself under different circumstances.

JUDGE ALESHIRE: Karen and I were there.

MR. PARKER: That's right. And you showed good taste to tell him, "No, we don't want any of your slides."

JUDGE ALESHIRE: Would you say I censored him?

MR. PARKER: Well, I think you were concerned that this was a venue in which anybody could walk in who might be offended or alarmed and you didn't want to be reckless.

But the reason I'm bringing this up, because not everybody has a perfect memory, and on that occasion, County Judge Bill Aleshire was told by Mike Weaver, the self-styled defender of our public morals -- Bill Aleshire was told that there were children down at this park.

JUDGE ALESHIRE: Actually, I was just reminded, we were explained that this was being broadcast, and we had people that didn't necessarily give their permission to be broadcast over live TV.

MR. PARKER: No. I had no trouble with your decision.

JUDGE ALESHIRE: He has the perfect memory. I don't.

MR. PARKER: This may have escaped your memory, but he did mention it on record as early as --

JUDGE ALESHIRE: Pictures of children, you mean?

MR. PARKER: No. Children at Hippie Hollow. He complained bitterly to you and to the public record that there were children at Hippie Hollow. This is a matter of public record, not just, you know, a few folks remembering it here and there, not just the people coming up here to testify, you know, "Here I am in the flesh. I was there." But it's a matter of public record. So I would hate to see any policy that's precipitous. I would hate to see any radical policy shift being made because of a claim of ignorance about such things.

And I'm not going to sit here and debate legal stuff with you. But since you're talking about a rule, a radical policy shift that's based on some legal interpretations, there is a point to bringing out the fact

that in the Texas Code 43.24 in Section 3, Subsection C, it's a -- that 23-24 is about a display of harmful materials to minors. What the good politicians meant is things -- well, in their opinion, it was harmful if you had –

JUDGE ALESHIRE: Terry, you're getting at or over the line about debating -- Terry, you're getting at or over the line about debating whether or not –

MR. PARKER: The point is that the law recognizes parental consent in Item Number 2 where it says that the exhibition was -- if the exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse. I'm just pointing out that it's bad -- it's bad public policy to make rules about park uses, radical policy shifts, when we have such a nebulous interpretation of the law, such an adamant rejection of parental consent on the part of the County Attorney who is very good on other issues, but on this issue has right here stated that he might have some personal biases, which is fine. Everybody's got biases. By turning them into public policies -- but there's no sense in compounding the biases by turning them into public policy.

Where are all the people who complain about this activity? Where are they? This is the second meeting. Where are they? Are you getting calls and they're not wanting to show up, maybe? You know, I've got to repeat again what Ruth Epstein from the ACLU said, "If this isn't broke, why are we trying to fix it?"

She made reference to the public access TV incident where our elected officials, in that case the City Council members, were being stampeded with a bogus threat of criminal prosecution, possibly, that would ruin their political careers because of their role in delivering sexually explicit material to minors. How are you going to run for office if you've been hit with that one?

And now here it is a couple of years later, and now we have elected officials, this time the County Commissioners, perhaps being concerned that they have a role in the production of child pornography because a mother might bring her daughter or son down there to Hippie Hollow, might bring the child with her, and some guy in the bushes or some woman in the bushes, for all I know, or in a boat, is going to take a picture of them and then take the picture of the child and go put it into some pornographic context and that somehow you might be culpable and the taxpayers of Travis County might be culpable because you facilitated this? Well, why don't we go after the people who manufactured the lenses? How about the camera body? How about the film? Were these the intended purposes? Do you think the taxpayers or you intended for children to be used for pornographic display? I don't think so. Did the parent? Do you think most parents, any parents, would bring their kids down there for sexual performance? I don't think so. If so, where are they? Where are these parents that -- where are these parents as far as being discovered on the basis of the investigation? That's -- and if you do find one somewhere, some aberration, that certainly does not

describe or characterize the intended -- the intention for most parents bringing their kids down there.

So, if you don't have kids being brought down there for sexual performance, for sexual display, if that's not what they're being brought down there for, then you're not facilitation something that's against the law. Before you rush ahead with a policy that's going to give Austin a black eye that it doesn't deserve, the Austin community, of all the -- of all the free beaches, nude public areas around the country, none of the other ones have any kind of prohibitions against families. None of them. This would be the first. You would be setting policy here. You would be taking us back into the Ayatollah's agenda, because there's no place else where this is done.

If the legal theory for going forward with a park rule that says families can't be down there is the violation of the Texas Public Against Public Nudity or the Texas Statute Against Public Nudity -- I believe Ken Oden said that that was the major consideration. Read that law. There's nothing in there about age. There is no age discrimination in that law. Age discrimination should be a factor here. Yes, it's true on other issues you can treat minors in a different way; but this is -- it's not been demonstrated that that's the case here.

So, why are we going forward with a policy change? I mean, are there reasons being discussed that the public can't be told that make any sense, that would stand any scrutiny? I mean, we live in an age when

there's a lot of cynicism about government. And government, unfortunately, has worked hard to earn that cynicism.

JUDGE ALESHIRE: Well, as one of the people that has worked very hard to be real clear and honest with the public, I hope you realize we've asked our attorney, and he has said the essence of what he advised us in the executive session is his legal reasoning about the law and the predicament that we may find other adults who are nude at Hippie Hollow in or you may find the owners and operators of the park in, who are sitting here.

And so, in answer to your question, no, there aren't other reasons that haven't been stated. You've heard what we've heard, and we're trying to be very open.

MR. PARKER: Why are you any different than the people who run the other nude beaches or the private resorts or the clothing-optional apartments? If you're in the role of management, and the shareholders analogy would be the taxpayers, where's the difference from a criminal standpoint? And if there is none?

JUDGE ALESHIRE: Are you referring to Texas? Are you referring to someplace under the Texas Penal Code?

MR. PARKER: As far as nude recreation?

JUDGE ALESHIRE: Uh-huh.

MR. PARKER: As far as private resorts?

JUDGE ALESHIRE: No, sir. Public.

MR. PARKER: No. And I have not heard anything –

JUDGE ALESHIRE: That would be a little difficult to find. That would be a short list.

MR. PARKER: I have not heard anything said here that differentiates public and private, from the standpoint of criminal liability. Because if it's a crime on public land, it's a crime on private land. There is no difference from a criminal standpoint.

COUNTY ATTORNEY ODEN: Well, of there is, Terry. I mean, it's legal to take a shower at home and be nude because it's in private. The whole distinction –

MR. PARKER: We're talking about ownership. We're not talking about display. Public display before adults is taking place at private resorts where you have unrelated adults and minors in each other's presence. That's a tradition for millions of Americans around the country.

JUDGE ALESHIRE: And that's not an issue for this Commissioners Court.



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MR. PARKER: No, it isn't. And I only raise it as, why would you forward with a legal theory that's this murky? Why would you go forward with a radical policy shift that's going to hurt a bunch of people? I mean, some of these –

JUDGE ALESHIRE: For me, Terry -- for me, it's sufficient that the individuals selected and empowered to decide what cases to prosecute have put us on notice that this is -- that this is the prosecutor's interpretation of the law. In my mind, that is sufficient.

There are forums in which that can be settled out as to who's right and who's wrong about that. But I think we can legitimately start policy questions at that point with that assumption. Is the prosecutor is taking the position that there is something going on at these parks that may be illegal and he intends to prosecute –

MR. PARKER: Well, he is conscientious, I'm sure, in his job. I'm not going to impugn him on that. But he can be biased on this issue. He can make a mistake. I would ask the Court to seek the opinion of another attorney. Just compare the two. That's what any owner would do. Thank you.

JUDGE ALESHIRE: Thank you, Terry. Someone else can come up if they want. Thank you, sir. And you can stay in the seats. You can speak from either one. Go ahead.

MR. CLUCK: I didn't know –

JUDGE ALESHIRE: Yes, go ahead.

MR. CLUCK: -- which one we needed to be in. Thank you, Judge.

Good afternoon. My name is Tracy Cluck. I'm with McKinley and Cluck, and we represent the Central Texas Nudists, which is affiliated with the American Association for Nude Recreation, the Southwestern Sunbathing Association, the Naturist Society, and the Naturist Action Committee.

Judge, I saw a little bit of the debate last week from tape and watched what's going here, and I think it's -- it's interesting that you drew this dichotomy between Mr. Oden's interpretation of the law and the policy. And, really, this is a policy issue. This is a policy issue. There's a larger policy that you have to look at as an executive body., it seems to me, and that's the proper role of the State in the family. And what some of these folks are telling you is that this is a family decision. It's a traditional family decision, and they would like you to respect that.

What's going on with families at Hippie Hollow and with nude recreation is not deviant. You have met some of these folks. You've seen their well-adjusted kids. And for a certain segment of our society, this is a normal lifestyle, as you -- as I've said, as you've seen before, this has been a traditional use of the park as well.

Now, those of us who don't go there regularly may not know that, but families have been going to

Hippie Hollow for -- for years and have enjoyed the park for years. In fact, it's been a godsend for many of them because it is a clean and safe facility. We have the park rangers there. They can enjoy outdoor recreation with their families and feel safe and secure. There have been no problems. Essentially, Hippie Hollow has been self-policing. Perhaps that's why we're not aware there are many families out there, because there haven't been any problems that have come to our attention.

I know if you go ask some of the park technicians and park rangers out there that work for you and for us -- I've spoken to some of them -- there are groups of regulars, including families who go out there. They know them. When there is a problem -- and there is always going to be in our parks, somewhere, some sort of illegal or deviant behavior -- they report this quickly. These people are ejected, and law enforcement has dealt with this. The naturists and the families that are going out there are not engaging in that kind of conduct.

Now, as a pure policy question -- and you've wanted to limit debate about whether or not this type of conduct is encompassed by the law. That is legitimately in Mr. Oden's purview and, as well, Mr. Earle's and the grand jury's on some of the felonious type of conduct that's been suggested.

As a policy matter, though, I think we have to decideIs it appropriate to make policy based on an interpretation of the law? There is really no need to change the policy. The policy has been the same. The

policy is there, folks. We've had the policy. The policy is there has been no rule and families have come in. And when patrons engaged in deviant behavior or any unlawful behavior and it was discovered, it has been either prosecuted or it is prosecutable.

So, regardless of whether or not you enact this policy, unlawful behavior can be prosecuted by Mr. Oden's office. And that is the law. I guess that raises the question -- and a lot of people want to argue about this. Is the law broad enough to encompass this otherwise innocent behavior?

Well, folks, weirder things have happened. I had a client who was -- who was charged with committing a terroristic act against her -- a terroristic threat against herself. This baffled me, but the law technically covered this. It would have been the first time in history, I think, that someone -- where a victim did not testify because they had a Fifth Amendment right against self-incrimination. But the case shook out shortly before it went to a jury trial. Sometimes the law is broad enough to do that. Prosecutorial discretion comes in.

Mr. Den, if I understand his position correctly, has told you in his view he's going to procure these cases if they come under the letter of the law. There are -- even if it's under the letter of the law and not under the spirit. There are checks and balances in the system, juries, ballot boxes, that will take care of this. Perhaps a test case will go up. It's happened before. I know the County Attorney's office has prosecuted adults for

skinny-dipping at Hippie Hollow. Juries in Travis County have said what they had to say about that.

There was no policy saying, I believe at that time -- and Mr. Oden will correct me if I'm wrong. I believe there was no policy specifically prohibiting nudity at Hippie Hollow. There were no signs that said, "WarningYou may not engage in skinny-dipping in this park or else the County Attorney will see this as a violation of the law and you'll be prosecuted." And yet, those prosecutions were brought, unsuccessfully, I believe, because the jury acted as the check and balance it's supposed to do.

So, as a policy matter -- as a policy matter, you have some decisions you can make. I think it's really fairly simple.

One, is just leave things as they are. Leave things as they are. And if the prosecutors in the county rightfully believe -- and I don't question Mr. Oden's honor or integrity in this. I believe he feels very strongly, as he does, that he would have to prosecute that. Fine. He can prosecute that. A case will go up. We'll see what a jury will come back with. That realm will take care of itself, regardless of the policy you set. Leave things as they are. Let a jury and let a ballot box decide that issue.

Two, you could accept a middle-ground view. And I think this is probably the only legitimate compromise view, and that is to restrict children from the park unless they're accompanied by a parent or

guardian. We do that with movies. We do that in a number of contexts where maybe something can be in there, but we've decided that that's the parents' purview to make that decision for that particular child, and they're all different and unique.

This, seems to me, would address the only legitimate concern I can think of. And I try to think of thisWhat would I, as a parent -- why would I want a policy saying no children? And the only thing I can think of was, as a parent, if I chose not to have my child exposed to that, I would be fearful that they could get access to the park, not in my presence, if it was open to minors. This would address that issue, I believe. If parents choose to to take their children in, they're there. They're watching. They're keeping an eye on them. Then that seems to me the only legitimate policy compromise or change that I could recommend.

The other idea -- the other thing that you could do is you could simply delay. You could ask for more public input. You could take -- each of you, Commissioners and Judge, walk out there and talk to these park rangers and park technicians who walk that park every day and police it, who see these people, see these regulars, see these families, know them, and know what's going on out there and get direct input from them. I think you'd be a little bit surprised. And talk to your staff and, I think, seek independent legal counsel.

I watched the hearing last week, and I know that there's been some discussion on this. I'm not really sure

what's going on in the Court's mind right now, why you're leery of not having this policy. There's been sort of a nebulous thing discussed about maybe civil liability, maybe criminal liability. I'm not sure. The County Attorney's office is on record that they think this policy should be enacted. Maybe if there's not a conflict there, at least there is, I believe, to your constituents.

And I'm not talking about a legal conflict here, Mr. Oden. I'm saying it's a political matter and there is at least a perception amongst your constituents of a conflict of interest that maybe you want to address by seeking independent legal counsel. It could help you better inform your public. And I've heard some of them speak and say, "We don't understand. What are you talking about?" And that might help allay some of that. That's one option.

I think the worst thing that you could do here is create an adults-only playground at Hippie Hollow. If you do that, you might as well probably double the park ranger staff out there in that park to protect against the problem, because I think you're sending the message, then, that Hippie Hollow is something that's for adults. It is something that is not wholesome, and you're inviting people to engage in that kind of conduct out there.

Thank you.

If you have any questions, I'd be happy to answer them.

JUDGE ALESHIRE: Tracy, you've raised several issues that have been on my mind and, I know, on the minds of my colleagues.

And, first of all, I want you to know that I've heard from park staff and there's -- that while there have been -- I've only heard recently that while there have some kids, not a whole lot of kids go out there, not a lot of parents bring their children.

But as to your recommendations that, first, we might do nothing and then if there's going to be prosecution under the statutes by Ken's office, that he could do so, that would be to ignore the advice that this might be analogous to the City of Austin's situation with Infosex and that we would find the Commissioners Court questioned and the issue referred to the grand jury, for example.

I disagree with you that there -- that this is not a matter that should be decided on the basis of the law and the penal code interpretation. You've shown the same respect that I think you should have for the fact that this is Ken's decision to make as to whether to seek prosecution under this. And I respect that as well.

The other thing, my personal opinion would be, if I had -- that if -- it may be to take your second suggestion to prohibit children from being there unless they were accompanied by their parents. But you've heard today that that's also not within the law, in Ken's

interpretation of that. And I wouldn't anymore question that than I would the original position that he –

MR. PARKER: Let me address that, if I might, Judge. That point right there, because I think that's the crux of this.
You know, you came out and you announced, "We want to separate the legal from the policy issue." But there it starts to –

JUDGE ALESHIRE: Because if -- frankly, you know, if you didn't have the legal issues, there are perhaps more options or other options that might be available, including to do nothing and that kind of thing. But that's not the case.

The reality is we've been -- you've heard the truth of what we understand to be the relationship between the penal code enforcement and the question about the policy. And I think that's very significant. I think until you deal with that, it doesn't get to be a pure policy issue.

MR. CLUCK: That's precisely my point. That's precisely my point, Judge. The two begin to blur. The two do begin to blur. And my point to you islt doesn't matter. If Mr. Oden wants to prosecute, I assure you there is a way to prosecute someone who is exploiting children for profit in a sexually deviant manner anywhere in this county, regardless of whatever policy this Court lays down on any public area. That's not -- simply not the issue.

The Sheriff's Department has arrested people out there before for deviant behavior in the last few years. I'm certain of it. There are -- probably have been people prosecuted for deviant behavior out there. We begin to mix the two –

JUDGE ALESHIRE: That's not an issue here, Tracy. That's not an issue. The issue was as it's brought up, and it's the disorderly conduct, primarily.

MR. PARKER: The issue, as I understand it -- and help me if I'm wrong -- is that we need the policy because the law says it's wrong. And that's what I'm having trouble with, and I think other people are as well.

JUDGE ALESHIRE: Well, we're the owners and operators of a park in which we are told there is illegal conduct going on. When you get down to the bottom line, that's the essence of it, that there is a legal distinction between whether or not it involves children or adults. That's the –

MR. PARKER: I see no legal distinction in the disorderly conduct statute, but –

JUDGE ALESHIRE: I understand you don't.

MR. PARKER: -- if the issue is we must have a policy, else we cannot prosecute, I think is misdirected. I think prosecution can occur, policy or no policy. Case in point for that is simplyI don't believe there was a policy prohibiting any nudity at all at Hippie Hollow the last

time cases went up and adults were prosecuted for nudity there. That's where the two begin to blur.

I don't believe that you need a policy. I don't believe that it's necessary to have a policy in order to enforce the law in that park. The law is being enforced already in that park and can continue to be in that park. So that's where the two begin to get blurred, Judge, and that's what I -- you know, I see is that there's a blurring in these two. I think you have a pure policy decision here, not a mixed -- not a mixed decision.

Thank you, sir

JUDGE ALESHIRE: Thank you.

Someone else can take Tracy's spot there.

COUNTY ATTORNEY ODEN: Judge, if I could -- I think I mentioned the principle. but for the purposes of clarification, it's my judgment this and similar situation have raised the problem of what would otherwise be criminal conduct being arguably made impossible to prosecute if the government takes action to give to a citizen, that is otherwise violating the law, a defense that it could never have otherwise, and that is what's called a justification defense, which stands for the general proposition that a branch of government can't lead a citizen to believe it's okay with them to commit a certain act -- in this case, bringing children nude, displaying them nude in a public place -- that if the government leads them to believe that's okay, especially

if the government -- where the government has a right to control it, chooses not to, even participates in it by providing the park and charging them and making a profit from it, then another branch of the government, which is the prosecution offices, are much more limited in being able to sanction what was otherwise illegal conduct because of the general proposition that the government can't lead you to believe it's okay and then another branch of government come in and punish you for it.

That's what brings these -- why I said last week , the policy decision cannot help but impact the ability to enforce the law where the government is the controller of the business operation and the park itself and can provide defenses to individual that otherwise would have no defense.

JUDGE ALESHIRE: Thanks you.

COUNTY ATTORNEY ODEN: Thank you, Judge.

MR. JENKINS: I'm Travis Jenkins. I don't know anything about the law, but it seems like by passing an ordinance that we have, we're saying that the police force out there is not doing the job they're supposed to be doing. And they've been taking care of that park for a long time. And anybody that's doing anything wrong, they take care of it.

I think you need to think about the people that are coming here from other places. I mean, Austin is a great city. It's a magnet for all over Texas. People have heard about Hippie Hollow. There are families coming all over -- from all over into Austin, Texas. And if they're met with a sign as soon as they come in that their children are not welcome out at our public parks, what kind of message is that that we're giving to people, that we're discriminating against their children, that they can't bring their children out to our public parks, that they, the taxpayers, are paying for? I mean, we pay taxes for that park. And it doesn't seem right that we discriminate against a segment of our population because of their age. It just doesn't seem right.

There's not any illegal activities going on out there that the people walking the shores don't take care of. Our enforcement out there is fantastic. There is nothing happening out there that they're not aware of. There's a -- you know, if he's worrying about them doing things and us being responsible for it, what about a disclaimer? I mean, you can put disclaimers on everything, any opinion you have. You're not being liable if you say that the attorney general is going to prosecute illegal activities. You know, or whatever. But I think discriminating against them -- I don't think that's the way we should do our public parks. If we start there, where are we going to stop? You know, you are going to put than up. Now they can't get in on the lake because people come by in the boats. They have little children in the boats, looking out at the park. You know, are we going to stop now anybody under 18 can't be in a boat in

a park -- I mean, on the lake? Why do we keep going on and on, putting more and more on?

The Attorney General is concerned, and I'm proud of him for that. But I think in this case we don't need that type of activity.

And anyway, that's all I have to say.

JUDGE ALESHIRE: Thank you, sir.

Someone else can take his place if there's someone else interested in testifying.

MS. TANDY: My name is Sue Marah (phonetic) Tandy. I'm going to be a senior at Harvard University next year, and I grew up swimming pretty frequently at Hippie Hollow. I live near there now. My brothers swim there. They're pretty normal, well-adjusted, intelligent kids.

I have a couple of points. The first isI really don't think that there's any connection between any other kind of deviant behavior, or any deviant behavior, and exposure to, you know, beautiful, you know, nondeviant naked bodies when you're a kid. And I would challenge Ken Oden, perhaps, to interview all the delinquents that he pulls in off the street or perhaps teenage mothers that he deals with or any other kind of behavior you think is negative for society and see how many of them went swimming at nude beaches when they were children.

And my other point isI think that you should address what the real problem is. And the real problem is not that people , you know expose their children to other naked people. The problem is that there, perhaps, might be some deviant people that might take pictures of children and display them and make it pornographic, or whatever, and that's when you're going to have a problem.

Well, you know, why don't you keep women off the streets because somebody might come around the corner and rape them. I mean, you don't prosecute or, you know, punish the victim of a crime. You punish who's perpetrating it. And that's not the the parents of those children. That's, you know, whatever deviant individual might be around. But that's going to happen anywhere. And I don't think that that's encouraged by, you know, allowing children to be around nude people.

And in my experience, I've known -- well, in general, that people who weren't exposed to nudity as children, who were taught that it was shameful and, you know, who saw people running around in little bikinis, you know, covering up only key areas were all that much more curious about it when they got to their teenage-years, and probably more likely to be interested in privately exploring those areas whenever they weren't in their parents' custody. So, you know, I think that if people are more open about that, that'll be better for all of us.

And I'm not going to get in a legal argument about it, but I definitely disagree with the action that's being proposed.

JUDGE ALESHIRE: Thank you.

Someone can take Marah's (phonetic) place there.

MR. STRICKLAND: Hello. My name is Peter Strickland. I've been a resident of Travis County for 25 years. I started swimming at Hippie Hollow as soon as it became established as a clothing-optional place. And the woman who just spoke is my stepdaughter. She did learn to swim there when she was about five years old, and she's now 21. I have two sons that I take there nowadays.

I don't feel that, you know, seeing naked human bodies is harmful to children. In fact, I have a feeling that it could be exactly the opposite. We have a problem, you know, with a lot of early teens getting into sexual activity too early, and some experts think this is because they're curious as to what the human body looks like. And if the -- if kids were exposed to nudity, they would not be so curious. But since most kids aren't, they're very curious and sometimes they get into situations where they'll get with some friend and get their clothes off and then they'll feel like they have to perform because they're in private and they've got this other person's clothes off and so on, you know.

Where in a setting like Hippie Hollow, you know, they just wouldn't feel the pressure, you know. It's just -- I think it's a way that people can deal with the curiosity of kids. And I'm trying to think. I think that's all I have to say.

JUDGE ALESHIRE: Okay. Thank you very much.
Is there anyone else who wants to come up?

COUNTY ATTORNEY ODEN: Judge, while other folks are coming forward –

JUDGE ALESHIRE: If there is anyone else, please, there's another seat open.

COUNTY ATTORNEY ODEN: To the woman who spoke against the proposal, two speakers ago, I haven't been to Harvard University myself, but I think if her position were valid, her primary complaint is about limitations on public nudity. And if that position were valid and were inherently good, as she seems to think it is, we would have no limitations on public nudity, period.

And the distinctions that some speakers are drawing about it being inherently therapeutic, in their mind, to allow that, and in the family situations -- the gentleman who just spoke here -- I fell compelled to continue to point out, we are not, by this policy, and I'm not proposing that it become illegal. It is not presently illegal and would not become illegal with this policy to

be nude in your homes or private places, even with others there, arguably, that are not family members. There are limited situations where that would still be legal.

The question is whether or not it can be legal in public and in the context of a publicly-owned and publicly-operated park. And I think we get -- sort of overstate how broad the policy is by making those kinds of arguments against it.

JUDGE ALESHIRE: Thanks, Ken.

MR. MORTON: My name is Bob Morton. I appeared before you last Thursday. I have some concerns. I'm not going to make my kids stand up this evening, unless my wife wants then to.

But I have some concerns that the County Attorney is wearing a few too many hats here. He comes to you and tells you that it's his opinion that this violates a particular law, and I'm not going to argue that. It's his right, certainly, to pursue that, if he wishes.

But then when you don't pass the signage exactly the way he wants it, then he comes back to you and says, "By the way, you may be establishing liability for the County here." And I think that he's giving you some advice on what it is that he's going to do, what it is that you need to do, and why you need to pass some kind of a rule change. And to the minds of the people that are watching out here, we're saying, "This seems to me like

a conflict of interest. This seems to me like a conflict that can be resolved if you simply sought another legal opinion, got an outside counsel."

Now, I'm not saying that Mr. Oden is presenting to you anything in bad faith at all; but he's presenting things, definitely, to you with a bias that he admits, with a point of view that he certainly -- he certainly owns up to. I think that you need to see something that is -- that gives you a little bit of advice, that's a little bit of independent advice from somebody who isn't wearing quite so many hats for you.

It's my concern that Mr. Oden can say, "If you don't do this, then I can't prosecute." He's got the ability to be able to prosecute offenses that go on out there right now, and has all along, and has done so from what I understand. So, I'm not going to argue the lawbut I think that the rule does not need to be in place in order for him to be able to prosecute, if he chooses to, whatever he sees out there. If you don't -- if you feel pressure that you have some kind of personal or County liability, get another independent opinion. It's something that that's important, and I think the people of the county deserve another opinion.

JUDGE ALESHIRE: Thank you, Mr. Morton.

MR. STEVENS: I'm James Stevens of Liberty Action International. Liberty Action International is a private, nonprofit research and education organization headquartered in Austin, Texas, one component of which

is bringing into existence and supporting intentional communities made up of affinity groups devoted to maximizing political and economic freedom, allowing human beings to reach their full potential within a sustainable environment.

It is somehow oddly fitting that almost exactly a year ago, July the 14th, Bastille Day, a day celebrated to mark an advance in human freedom, I was speaking before another group of legislators, the Austin City Council, against another attack on parental rights and responsibilities, the citywide teen curfew. At that time I quoted the conservative newspaper columnist and TV pundit, George Will, that "anger and fear do the work of reason in democracy."

And I think we see that again here today -- anger and fear driving these proceedings. The anger and fear of the County Attorney, his fear of whatever private devils drive him, his fear and anger at people who dare to raise their children and conduct their lives in ways he does not understand or approve, the County Commissioners' fear of being put behind the political eight ball or bankrupted is driving their desire to discriminate against and exclude families from a public park.

Another conservative, William F. Buckley, wrote, "Ours is an age that rewards moral exhibitionism." And Ken Oden has learned that lesson well. It's just that he has a limited repertoire of tactics. This recycled old threat that he also used against the Austin City Council

is getting whiskers on it. It was bogus then, and it's bogus now.

The purpose of the Bill of Rights is to protect the rights of minorities, even unpopular minorities. And I think that's how we're being characterized, as an unpopular minority. This is part of an overall culture war that was proclaimed by Pat Buchanan in 1992. This is part of a war for the mind and soul of America. It is the same as any other war. It is not about ideas. It is about power and who will have it and who will obey it. The ideas are just creations of the ministry of propaganda and are the front and justification for this war to crush ideas, to contain freedom, to chain humankind, and to crush it under the power of what Thomas Jefferson called in his 1826 Fourth of July letter, "bigotry and priestcraft." It's a war to force into being a society and culture where children are used as a blunt instrument to bludgeon adults into some fear-based general formula of what is permissible.

Nineteenth century religious idealism that saw the child as nonsexual, therefore, innocent, has been replaced by the Freudian belief that there is only one system of sexual maturation. And now comes the government as the only instrument smart enough to tell us how to raise our children.

We have long years of legal nude use in this county, where unrelated adults and children have participated together. Many cases have established that. It's not a moral issue or a nudity issue. It's a matter of

discrimination and fair treatment. So let me conclude by directing to the County Attorney one other quote. Mrs. Cadwalder (phonetic) in Middlemarch always said, "One cannot be wise for other people."

MS. MORTON: My name is Chris Morton.

I see your basic concern is liability, and that's the main reason you're considering this.

Last week you voted to approve signs and literature that warned people, if they bring their children in there, they may be liable for prosecution. And I think the important word is "may," because the courts are the only ones that are going to decide that. You've got signs. You've got the literature. That's your disclaimer. That covers your liability. Let the courts determine what is legal, not Ken Oden.

JUDGE ALESHIRE: Thank you, Chris.

I'm assuming there's no one else that wishes to testify on this.

We'll proceed.

We have proposed two orders under this agenda item. One would add to Chapter 92 of the County manual, the rule under general rules, "No person under the age of 18 shall be admitted to that McGregor Hippie Hollow Park." And the other order would direct that a sign be constructed, indicating "Any authorization or

consent of the nude display of children and the nude display of adults with children present under the age of 18 in this park will be treated as a violation of the law and park rules. Violators and parties to such violations will be investigated and prosecuted, if possible."

Commissioners, do you have any discussions or motions?

COMMISSIONER SONLEITNER: I'll go ahead and start.

I am not comfortable being put in this position of kind of being the thought police and being involved this kind of argument. But that is where we are.

I consider myself to be a very tolerant person. I think this community is very, very tolerant, and I don't think anyone can fault County government for accommodating an alternative lifestyle, in terms of setting aside a specific county park to allow folks who prefer to go clothing-optional when they go to the lake. But it does take on a totally different connotation so far as children are concerned, as far as I'm concerned.

I've gotten a number of phone calls, I've gotten a number of visits from folks to my office, and I'm thinking only the best intentions of those parents who have come to visit me, but I respect what County Attorney Ken Oden has told me. I believe he will prosecute in these cases, and I'm not going to challenge his legal authority.

I wish this would all just go away; it never happened. But that's not the fact circumstances that we have in front of us. And I certainly do not want to ruin what we have out there in terms of allowing folks, adults, to go clothing optional at Hippie Hollow. So I will move approval of the two orders that we have in front of us, one related to no one under the age of 18 and the appropriate change in the signage as read by Judge Aleshire.

JUDGE ALESHIRE: I'll second the motion.

I'd suggest -- I agree with your reasoning, as well, Karen, and I would -- I do believe there is something broke if we have the potential of having children at this particular park unescorted by their parents. But while I would be concerned about that, I admit to you personally I'm not at all upset by the kind of testimony I've heard from parents who have taken their children there. I don't think you've -- in my opinion, you're not doing anything particularly harmful to your children, except that if it is a violation of the law, we take oaths of office here to respect the law, and I not only don't challenge Ken's authority, I respect his judgment and have learned over the years to trust his performance in office. And if -- that is his role as prosecutor, and he is not a law maker. He is enforcing in good faith, I believe, what he believes the law to be.

Given that assumption, I think this is the appropriate action for the Commissioners Court to take. Any other comments?

Those in favor of that motion?

That passes unanimously.

Margaret, did you move that we adjourn? I thought so.
(ADJOURNED AT 449 P.M.)

TRANSCRIBER'S CERTIFICATE

I, Jill A. Weiler, court-approved transcriber, certify that the foregoing is a correct transcription from the tape recording of the proceedings in the above-entitled matter.

I further certify that I am neither counsel for, related to, not employed by any of the parties to the action in which this hearing was taken, and further that I am not financially or otherwise interested in the outcome of the action.

I further certify that the transcription fee of $_____ was will be be paid in full by the Travis County Attorney's Office.

_____ _____
Signature of Transcriber Date

_____
Typed or Printed Name
9100 Amanda Drive
Austin, Texas 78729
(512) 335-5618

## APPENDIX H

**IN THE 201ST JUDICIAL DISTRICT COURT**
**TRAVIS COUNTY, TEXAS**

**NO: 95-11383**

| | |
|---|---|
| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

Affidavit of Robert A. Morton, Jr.

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared affiant, who being by my first duly sworn, on oath states:

1. My name is Robert A. Morton, Jr. I am of sound mind, competent and authorized to make this affidavit. I am capable of making this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. Hippie Hollow Park, also known as McGregor Park, is a clothing optional park located on the shores of Lake Travis. It is operated as a clothing optional park by Travis County. Even before the County took over management of the park in the 1980s, the area was used for clothing optional and nude recreation, and I have personal knowledge that it was well known for that aspect of its use in the community.

I knew of Hippie Hollow before I moved to Austin, and it was among the reasons I moved to Austin.

By the time I began my personal involvement with Hippie Hollow in 1974 when I moved to Austin, it was already a well established clothing optional area. Few improvements existed at that time. The parking lot was an unpaved area off of Comanche Trail. Irregular trails led down to the water of the lake. There were no restroom facilities.

Nevertheless, the place was a popular spot for nude

recreation, and it is my personal observation that from my first experiences with it, Hippie Hollow was frequented by singles, couples and families with children.

3. When Travis County took over management of the park in the 1980s, a number of changes were made. Among those were enlargement and pavement of the parking lot, fencing of the property, creation of paved trails along the coves and the construction of restroom facilities. The County placed buoys in the water to protect the skinny-dippers from boats that might come too close to the shore. One thing that did not change was the clothing optional use of the park. I personally observed that families with children were among those who continued using the park in the traditional clothing optional manner.

4. Some time after Travis County began managing the park, a parking fee began being charged at the entrance. The County erected a number of informational signs, including those that read:

> "NOTICE NUDE SWIMMING OR SUNBATHING MAY BE OCCURRING BEYOND THIS POINT," and
>
> "NOTICE NUDE SWIMMING OR SUNBATHING MAY BE OCCURRING IN THIS PARK."

Such a sign was originally located at the entrance to the

park, just off Comanche Trail. It was later moved to the top of the trail leading to the lake from the parking lot. The sign, or one very similar to it, with similar wording, continues to be posted at the top of the trail.

5. Since the time of my first visits to Hippie Hollow, I have seen that law enforcement has had free access to the park. I've observed Travis County Sheriff's deputies mingling among the nude crowd. Sheriff's Department personnel arrived by car or by boat and generally walked the paths and trails without incident.

I've observed deputies escorting away someone who had apparently had too much to drink and was behaving poorly. I've seen law enforcement officers assist with medical evacuations. But I've never seen any arrest or citation for nudity. I've conversed with Travis County deputies who have stopped in passing to talk with my wife, my children and me, while we were all nude on the rocky shore of Hippie Hollow.

Some time after the County assumed management of the park, Sheriff's deputies augmented their foot patrols with mounted patrols on horseback. County-trained park rangers assumed much of the regular foot patrol, and I have seen them there regularly.

6. Prior to July of 1995, families with children were present extensively at Hippie Hollow. I have personally seen children at Hippie Hollow each year from 1974 through mid 1995, a period of more than twenty years.

7. Before my wife Christine and I married, we often went on dates together at Hippie Hollow. Paddling nude on air mattresses in one of the coves, we first discussed the possibility of a life together. We discussed having children, and we agreed that we would bring them with us to Hippie Hollow.

The first visit our son Robert made to Hippie Hollow with us was in the late summer of 1980, when he was just a month old. Christine and I enjoyed the water in shifts, one skinny-dipping while the other held the baby.

Robert made frequent trips with us to Hippie Hollow. When Rebecca was born in 1983, she joined us. Charles, who was born too late in 1986 to make the skinny-dipping season, first joined us in the Spring of 1987.

We watched our children grow up at Hippie Hollow. Each has become an excellent swimmer, in part because of the hours and days spent swimming nude at Hippie Hollow. Becky is a lifeguard for the City of Austin. Robert earned his swimming merit badge while working toward his Eagle rank in Boy Scouts.

No matter how many times we would go to Hippie Hollow, each visit was a treat, eagerly anticipated by my wife, my children and me. Skinny-dipping at Hippie Hollow became an established and cherished family tradition. Our children would bring fins, snorkels and goggles, and we would spend hours together there. Often,

they would play with children from other naturist families.

Our last visit to Hippie Hollow as a family was in June of 1995, just before the Travis County Commissioners banned families with children.

8. Prior to the banning of children in 1995, our local naturist club had regular and special events at Hippie Hollow. Those activities always included children, as do all events hosted and sponsored by family-oriented naturists.

9. My entire family was present at the Travis County Commissioners Court meeting on July 11, 1995, when the park rule was enacted to ban families with children from enjoying Hippie Hollow. I testified, and I introduced my three children to the commissioners.

10. Hippie Hollow/McGregor Park is enclosed by a fence. A gated entry controls access. Presently, it is not possible to gain entry to the park with minor children.

11. Prior to the 1995 imposition of the ban on families with children, Hippie Hollow was the only safe, public facility in the state that was available for naturist family recreation. In the years that I had gone there with my family, I only observed one instance of an individual exhibiting inappropriate behavior. I assured that my children did not see it, and I escorted the individual to the parking lot.

12. As a result of the imposition of rules that prohibit children at Hippie Hollow, the Morton family and other families within Central Texas Nudists have been deprived of the only publicly sanctioned facility for nude swimming and sunbathing in the State of Texas.

13. I have participated in nude recreation since before I was ever associated with an organization which conferred official membership. It was in 1973, while I was still in college, that I first joined the American Sunbathing Association (ASA). That organization subsequently renamed itself the American Association for Nude Recreation (AANR). My family and I are AANR members. AANR is headquartered in Kissimmee, Florida.

14. The Southwestern Sunbathing Association (SWSA) is one of seven regional divisions of AANR. It serves the states of Oklahoma, Texas, Arkansas and Louisiana. SWSA is headquartered in Dallas, Texas. My wife Christine serves as one of six directors of SWSA, elected by region-wide vote. Christine is also the SWSA Junior's chair, responsible for children's activities throughout the four-state region.

In 1994, I was appointed to be chairman of the SWSA regional Government Affairs Committee, a capacity in which I serve today.

I am the editor of The Sunspot, the quarterly regional newsletter of the Southwestern Sunbathing Association.

From 1996 to 1998, our son Robert served as President of the Junior SWSA, a position to which he was twice elected by his peers. Robert was one of two recipients last year of the SWSA scholarship, awarded for academic accomplishment and participation in regional nudist activities.

15. Our family belongs to The Naturist Society (TNS), which is headquartered in Oshkosh, Wisconsin. The Naturist Society promotes social family naturism as a recreational choice and as a lifestyle throughout North America.

The Naturist Action Committee (NAC) is the political action arm of The Naturist Society. NAC is a non-profit 501(c)4 organization that exists to advance and protect the rights of naturists throughout North America. The Naturist Education Foundation (NEF) is a sister organization to NAC. NEF is a non-profit 501(c)3 organization that serves the educational and informational needs of North American naturists.

I presently serve on the boards of both NAC and NEF. Nine board members are elected from and by the 30,000 person membership of The Naturist Society. My fellow board members have twice elected me Chairman of both NAC and NEF, positions I hold today. I also serve as the executive director for the Naturist Action Committee.

I am the editor of the NAC Newsletter, a monthly newsletter for naturist supporters of the governmental and

legal activities of The Naturist Society.

In my capacity as NAC Chairman, I have traveled throughout North America.

a) I have visited with naturists at naturist gatherings.
b) I conducted naturist workshops and seminars.
c) I testified before state legislative committees in Texas and elsewhere.
d) I have given court testimony as an expert witness on social nudity.

16. The Morton family belongs to Central Texas Nudists (CTN), a club based in Austin, Texas. CTN is affiliated nationally with The Naturist Society and the American Association for Nude Recreation, and regionally with the Southwestern Sunbathing Association.

My wife Christine is First Vice President and Activities Director of CTN.

I am Fourth Vice President and newsletter editor for CTN.

17. Central Texas Nudists is a family-oriented club for social nudists. It embraces the values and ideals of The Naturist Society. CTN works to assure safe and legal nude recreational and lifestyle opportunities for its members and others. While CTN does not exclude singles from becoming members, the membership consist primarily of naturist couples and naturist families with children.

In addition to activities related to social nudity, Central Texas Nudists seeks to be an important part of the community. As an organization, we have volunteered at the Travis County Food Bank, and each year, we make it a group civic project to participate as volunteers in the City of Austin's Christmas tree recycling program.

18. Hippie Hollow has been a popular gathering spot for Central Texas Nudists and its members, because it is clean, well maintained, convenient, accessible for families with children, and is regularly patrolled by Park Rangers.

19. The nudist and naturist movement has a long history in the United States. The American Association for Nude Recreation (formerly known as the American Sunbathing Association) has been in existence for more than 60 sixty years. Prominent American naturists include Benjamin Franklin and Charles Richter, the inventor of the earthquake scale.

20. Naturists believe that the body in all its many forms is beautiful and natural. At the core of naturist family philosophy is the ideal of body acceptance and a healthy, wholesome attitude toward nudity and the human body.

21. The values of naturism are those that my wife and I are attempting to pass to our children and with which we intend to imbue them. Specifically, it is my firm belief that these values teach our children to appreciate and respect diversity in society, self confidence, self-esteem, respect for others, and wholesome, healthy attitudes toward

nudity and human relationships.

22. The fundamental mechanism for imbuing these values is through nude family recreational activities. It is my belief that social nudity, exemplified by nude swimming and sunbathing, promotes a healthy attitude regarding body acceptance. I believe that the inclusion of families and children in these activities is an important and natural part of our chosen lifestyle.

23. Also fundamental is the fact that naturists do not equate nudity with sexuality. This a value that my wife and I seek to instill in our children.

24. I believe that our time spent as a family at Hippie Hollow has played a significant role in our ability to inculcate to our children the values my wife and I hold dear. I believe that these values have contributed, and continue to contribute to the development of our children as healthy, happy people.

25. Our son Robert is 18 and has just completed his freshman year at Rice University, where he is pursuing a double major in electrical engineering and computer science. Robert was a Boy Scout, earning his way through the Eagle rank. While in high school, Robert accumulated enough advanced placement credits to be awarded 36 hours of college credit upon his entry to Rice.

Robert has participated in CTN's civic projects, and he also organized and implemented public service projects

while in high school at the Science & Math Academy at LBJ High School in Austin. Examples of these are a school-wide tree planting and two school-wide blood drives. For his Boy Scout Eagle project, Robert chose to rebuild the playscape at the elementary school he had once attended.

Robert's favorite hobbies are chess and rock climbing.

26. Our daughter Becky just turned 16. She will be a junior at the Science & Math Academy at LBJ High School in Austin. Becky is a full time student but also works as a lifeguard for the City of Austin. This past winter, she was one of only a very few guards who worked through the winter months at the pools that stay open year round. During that time, she was the youngest employee of the City of Austin. Last summer, Becky saved the life of a drowning child at Garrison Pool in South Austin.

Becky plays flute in the LBJ High School Band. When her brother Robert graduated from LBJ, Becky took over as coordinator of the blood drive. It was her goal to best her brother's record for the number of units of blood donated, and she did. Becky has participated in CTN's public service projects and worked for several summers as a volunteer at the public library.

27. Our son Charles is 12. Charles has been an honor student at Joslin Elementary School and Bailey Middle School, and he will be entering the seventh grade in the

Magnet Program at Kealing Junior High School. Charles was a Cub Scout, and is now a Boy Scout, having just earned his first merit badge.

Charles is the starting pitcher on his little league baseball team. He also plays defensive tackle on his little league football. He recently performed a role in a school production of "The Diary of Anne Frank."

Charles has participated in all of CTN's public service projects.

28. Hippie Hollow is vitally important to our family. The very fact of Hippie Hollow as a governmentally controlled public park where nudity could be publicly accepted and sanctioned served for years to legitimatize and affirm our naturist philosophies in the eyes of our children.

29. My experience is that social nudity is a large beneficial influence in the raising of children. Further, my experience is that there is a significant difference between private nudist resorts and naturist activities in a less confined environment. My personal observation is that loss of family access to Hippie Hollow has caused our family irreparable harm.

30. I have been associated with social nudity and group nudist functions for more than 25 years. I have viewed the video entitled "Natural Summer," and based on my personal experience the video fairly and accurately

represents activities that take place at family-oriented naturist gatherings, events and occasions.

Through my naturist experiences, I recognize and am personally acquainted with many of the individuals who appear in the video, "Natural Summer."

Through my naturist experiences, I am also personally familiar with several of the venues presented in the video. Although it was not named in the video, the site of The Naturist Society's Eastern Gathering was the Pocono Picnic Company, near Pocono, Pennsylvania. I spent several days at a naturist gathering there just this past summer (1998).

During the time it was clothing optional, my wife Christine and I personally spent time at the New Manor Apartments in Austin, which were also featured in the video.

I have personally spent a great deal of time at Hippie Hollow, and in general, I find that park to be fairly and accurately represented in the video, "Natural Summer." The inclusion of children in the video is consistent with my many personal experiences of the park. The scene of the family skinnydipping together is evocative of my own experience with my own family.

Through my many years at Hippie Hollow, I have seen and interfaced with many sheriff's deputies and park rangers. Based upon my personal experience, the video's

portrayal of an attitude of mutual tolerance and respect between the deputy and the nude woman petting his horse is a fair and accurate portrayal of the attitudes between uniformed officials and naturists at Hippie Hollow.

Many of the activities presented in the video are similar to those in which members of Central Texas Nudists participate.

a) My son Robert was taught to juggle at a CTN event by a CTN member. Robert has performed his juggling skills at a nude talent show of the Southwestern Sunbathing Association.

b) I have participated in a golf cart event similar to the one featured at Cypress Cove.

c) Each year, Central Texas Nudists sponsors a costumed Halloween social party very much like the one of Tri State Naturists that is documented in the video.

d) Members of Central Texas Nudists learned to SCUBA dive nude in certified training delivered while students and instructor alike were nude at Hippie Hollow. A scene of nude SCUBA diving was shown in the video.

e) I have participated in nude massage sessions. The video "Natural Summer" fairly and accurately represents the sensual but non-sexual nature of such therapy. Since naturists believe that the body is not shameful, honest touching is a matter of personal preference. It is my

experience that the personal preferences among naturists regarding touching varies from individual to individual, much as in clothed society.

f) I have personally experienced social nudity at resorts and on public lands. Each is special, but as the video points out in its fair and accurate presentation, the two experiences are different.

FURTHER AFFIANT SAYETH NOT.

/s/_____
Robert A. Morton, Jr.

SUBSCRIBED AND SWORN TO BEFORE ME, on this 25th day of May, 1999.

/s/_____
Janice L. Moore
Notary Public, State of Texas
Commission Expires 08-19-2001

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**APPENDIX I**

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**IN THE 201ST JUDICIAL DISTRICT COURT**
**TRAVIS COUNTY, TEXAS**

**NO: 95-11383**

| | |
|---|---|
| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

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Affidavit of Christine A. Morton

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared affiant, who being by my first duly sworn, on oath states:

1. My name is Christine A. Morton. I am of sound mind, competent and authorized to make this affidavit. I am capable of making this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2. Hippie Hollow Park, also known as McGregor Park, is a clothing optional park located on the shores of Lake Travis. It is operated as a clothing optional park by Travis County. Even before the County took over management of the park in the 1980s, the area was used for clothing optional and nude recreation, and I have personal knowledge that it was well known for that aspect of its use in the community.

I first visited Hippie Hollow in 1969. At that time, it was already a well established clothing optional area. It is my personal observation that from my first experiences with it through June, 1995, Hippie Hollow was frequented by singles, couples and families with children.

3. Travis County took over management of the park in the 1980s. Clothing optional use of the park continued. I personally observed that families with children were among those who continued using the park in the traditional clothing optional manner.

4. Some time after Travis County began managing the park, a parking fee began being charged at the entrance. The County erected a number of informational signs, including those that read:

> "NOTICE NUDE SWIMMING OR SUNBATHING MAY BE OCCURRING BEYOND THIS POINT," and
>
> "NOTICE NUDE SWIMMING OR SUNBATHING MAY BE OCCURRING IN THIS PARK."

Such a sign was originally located at the entrance to the park, just off Comanche Trail. It was later moved to the top of the trail leading to the lake from the parking lot. The sign, or one very similar to it, with similar wording, continues to be posted at the top of the trail.

5. During my earliest visits to Hippie Hollow in 1969, while I was enrolled at the University of Texas, I observed families with children skinny-dipping and sunbathing nude there.

6. Prior to July of 1995, families with children were present extensively at Hippie Hollow. I have personally seen children at Hippie Hollow each year from 1969 through mid 1995, a period of more than twenty-five years.

7. My husband Bob spent a great deal of time together

at Hippie Hollow before we were married. It was at Hippie Hollow that we first spoke of having children together. We agreed that we would bring our children with us to Hippie Hollow.

Weather permitting, we have brought all of our children to Hippie Hollow with us just as soon as they have been old enough to travel. Until 1995, our children had never known a time when they did not go to Hippie Hollow with us.

We were at Hippie Hollow last as a family in June of 1995. In July of 1995, the Travis County Commissioners banned families with children.

8. Prior to the banning of children in 1995, our local naturist club had regular and special events at Hippie Hollow. Those activities always included children, as do all events hosted and sponsored by family-oriented naturists.

9. My entire family was present at the Travis County Commissioners Court meeting on July 11, 1995, when the park rule was enacted to ban families with children from enjoying Hippie Hollow.

10. Hippie Hollow/McGregor Park is enclosed by a fence. A gated entry controls access. Presently, it is not possible to gain entry to the park with minor children.

11. Prior to the 1995 imposition of the ban on families

with children, Hippie Hollow was the only safe, public facility in the state that was available for naturist family recreation.

12. As a result of the imposition of rules that prohibit children at Hippie Hollow, the Morton family and other families within Central Texas Nudists have been deprived of the only publicly sanctioned facility for nude swimming and sunbathing in the State of Texas.

13. I have participated in nude recreation since the early 1970s. My family and I members of the American Association for Nude Recreation.

14. My family and I are member of the regional Southwestern Sunbathing Association (SWSA), which covers the states of Texas, Oklahoma, Arkansas and Louisiana. I was elected to the board of directors of SWSA in 1996. I am also the SWSA Junior's chair, responsible for all regional children's activities. In 1996, I coordinate all the games and competitions for the SWSA regional convention.

15. Our family belongs to The Naturist Society (TNS). The Naturist Society promotes social family naturism as a recreational choice and as a lifestyle throughout North America.

16. I have:

a) attended naturist gatherings.

b) participated in naturist workshops and seminars.

c) helped put on regional nudist conventions.
d) participated in national nudist activities.

16. The Morton family belongs to Central Texas Nudists (CTN), a club based in Austin, Texas. CTN is affiliated nationally with The Naturist Society and the American Association for Nude Recreation, and regionally with the Southwestern Sunbathing Association.

I am First Vice President and Activities Director of CTN.

17. Central Texas Nudists is a family-oriented club for social nudists. It embraces the values and ideals of The Naturist Society. CTN works to assure safe and legal nude recreational and lifestyle opportunities for its members and others. The membership consist primarily of naturist couples and naturist families with children.

18. Hippie Hollow has been a popular gathering spot for Central Texas Nudists and its members, because it is clean, well maintained, convenient, accessible for families with children, and is regularly patrolled by Park Rangers.

19. The nudist and naturist movement has a long history in the United States. The American Association for Nude Recreation (formerly known as the American Sunbathing Association) has been in existence for more than 60 sixty years.

20. Naturists believe that the body in all its many forms

is beautiful and natural. At the core of naturist family philosophy is the ideal of body acceptance and a healthy, wholesome attitude toward nudity and the human body.

21. The values of naturism are those that my husband and I are attempting to pass to our children and with which we intend to imbue them. Specifically, it is my firm belief that these values teach our children to appreciate and respect diversity in society, self confidence, self-esteem, respect for others, and wholesome, healthy attitudes toward nudity and human relationships.

22. The fundamental mechanism for imbuing these values is through nude family recreational activities. It is my belief that social nudity, exemplified by nude swimming and sunbathing, promotes a healthy attitude regarding body acceptance. I believe that the inclusion of families and children in these activities is an important and natural part of our chosen lifestyle.

23. Also fundamental is the fact that naturists do not equate nudity with sexuality. This a value that my husband and I seek to instill in our children.

24. I believe that our time spent as a family at Hippie Hollow has played a significant role in our ability to inculcate to our children the values my husband and I hold dear. I believe that these values have contributed, and continue to contribute to the development of our children as healthy, happy people.

25. Hippie Hollow is vitally important to our family. The very fact of Hippie Hollow as a governmentally controlled public park where nudity could be publicly accepted and sanctioned served for years to legitimatize and affirm our naturist philosophies in the eyes of our children.

26. My experience is that social nudity is a large beneficial influence in the raising of children. Further, my experience is that there is a significant difference between private nudist resorts and naturist activities in a less confined environment. My personal observation is that loss of family access to Hippie Hollow has caused our family irreparable harm.

27. I have been associated with social nudity and group nudist functions for more than 25 years. I have viewed the video entitled "Natural Summer," and based on my personal experience the video fairly and accurately represents activities that take place at family-oriented naturist gatherings, events and occasions.

During the time it was clothing optional, my husband and I personally spent time at the New Manor Apartments in Austin, which were also featured in the video.

I have personally spent a great deal of time at Hippie Hollow, and in general, I find that park to be fairly and accurately represented in the video, "Natural Summer." The inclusion of children in the video is

consistent with my many personal experiences of the park. The scene of the family skinny dipping together is a fair and accurate portrayal of my own experience with my own family.

Through my many years at Hippie Hollow, I have seen and interfaced with many sheriff's deputies and park rangers. Based upon my personal experience, the video's portrayal of an attitude of mutual tolerance and respect between the deputy and the nude woman petting his horse is a fair and accurate portrayal of the attitudes between uniformed officials and naturists at Hippie Hollow.

FURTHER AFFIANT SAYETH NOT.

/s/_____
Christine A. Morton

SUBSCRIBED AND SWORN TO BEFORE ME, on this 25th day of May, 1999.

/s/_____
Tracy Bittner
Notary Public, State of Texas
Commission Expires Sept. 1, 1999

---

## APPENDIX J

---

**IN THE 201ST JUDICIAL DISTRICT COURT**
**TRAVIS COUNTY, TEXAS**

**NO: 95-11383**

| | |
|---|---|
| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

---

Affidavit of Robert A. Morton, III

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared affiant, who being by my first duly sworn, on oath states:

1. My name is Robert A. Morton, III. I am of sound mind, competent and authorized to make this affidavit. I am capable of making this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

2 I believe my perspective as a nudist is a unique one precisely because I have been a nudist my entire life. I have been surprised to discover that most adult nudists actually discovered this lifestyle they now cherish, and I have been told how fortunate I am to have been raised in such a special environment. Based on my experience, I believe this to be true.

3. It is not hard for me to imagine how a young child can become startled and afraid about the changes his body goes through during puberty - we've all been there. But the atmosphere in which I was raised was not the kind to foster fear and shame about my own body. The utter openness that I grew up in made my transition through puberty a very natural thing - a fact of life. I was taught that there were indeed strange and new things happening

to me, but that it was a part of growing up and that there was nothing to fear about those changes. It appears that most kids aren't as fortunate.

4. High school and my first year of college have really opened my eyes to the extent of body-shame and self-consciousness that has propagated throughout today's youth (though I suspect this has been going on for some time now). The need to be physically unblemished is one of the strangest kinds of peer pressure - almost a silent one - that I've ever seen. But with models flashing across T.V. screens and swimsuit advertisements in the paper, there seem to me to be plenty of opportunities for people to really question the shape of their body. In my experience, the number one question is of course, 'Am I too fat?' But the question I want to ask of these people is, 'Too fat for whom?'

5. None of this is to say that I don't care at all about my own physical condition. I believe that for health reasons alone, it is important to take care of your body. But I enjoy rock climbing, camping, and hiking, all of which are more enjoyable if I can keep myself in shape.

6. The point is that my concerns about my body are my own. Based on my personal experinces and the way

I have been raised, I'm not inclined to care what other people think of my body or how they judge me for it, nor do I have any reason to base my relations with others on their physical perfection.

7. I had been going to Hippie Hollow with my family since before I can even remember. I've enjoyed activities there ranging from simple family trips to organized gatherings with friends to even taking scuba-diving lessons from a certified instructor who was a member of Central Texas Nudists.

8. The benefit from this is obvious to me. I have had the opportunity to enjoy an environment where fitting into swimsuits wasn't an issue, but more importantly, my parents' bringing me to Hippie Hollow has helped me learn that I don't need to conform my body to anyone's expectations but my own.

9. I believe there are probably people still discovering nudism through Hippie Hollow. But I believe there are probably more people who are prevented from discovering nudism through Hippie Hollow because they are under the age of 18. My experience is such that I can't claim to know what that is like, I can only give you my story as one who grew up with the opportunity to enjoy Hippie

Hollow. This is my story.

FURTHER AFFIANT SAYETH NOT.

/s/_____
Robert Morton III
SUBSCRIBED AND SWORN TO BEFORE ME, on this 25th day of May, 1999.

/s/_____
Janice L. Moore
Notary Public, State of Texas
Commission Expires 08-19-2001

---

**APPENDIX K**

---

**IN THE 201ST JUDICIAL DISTRICT COURT**
**TRAVIS COUNTY, TEXAS**

**NO: 95-11383**

| | |
|---|---|
| Central Texas Nudists; Robert A. Morton, Jr.; and Christine A. Morton, Individually and as next friend of Robert A. Morton, III, Rebecca E. Morton, and Charles G. Morton, Minor Children, *Plaintiffs-Appellants* | ) |
| v. | ) |
| County of Travis and Lower Colorado River Authority, *Defendants-Appellees* | ) |

**Affidavit of Paul R. Abramson, Ph.D.**

| | |
|---|---|
| STATE OF CALIFORNIA | ) |
| COUNTY OF SANTA BARBARA | ) |

BEFORE ME, the undersigned Notary Public, on this day personally appeared affiant. who being by me first duly sworn, on oath states:

My name is Paul R. Abramson. I am of sound mind. competent and authorized to make this affidavit. I have personal knowledge of the facts stated herein, and they are true and correct.

I am a professor of psychology at UCLA. I have been a professor there since 1976. My main area of expertise is human sexuality. I teach a large (400+ student) class titled "Human Sexuality", and a smaller seminar titled "Sex and the Law". The seminar is taught in two consecutive quarters, the first quarter being devoted to constitutional issues, the second quarter devoted to criminal and civil issues.

I have 90+ professional publications, including 6 books. I am the author (with Dr. Steven Pinkerton) of "With Pleasure: Thoughts on the Nature of Human Sexuality" (published by Oxford University Press) and "Sexual Nature I Sexual Culture" (published by the University of Chicago Press). I am also the former Editor of The Journal of Sex Research (the nation's oldest scholarly journal devoted to human sexuality) and was Technical Advisor to the World Health Organization's Global Program on AIDS. Finally, I have given a large number of professional talks throughout this country, Europe, and Asia.

As a result of my expertise, I have been qualified as an Expert Witness in state and federal cases involving: rape, incest, pornography, nudity, sexual harassment, child pornography, etc. I have also lectured to the law faculties at UCLA, Stanford and the University of Chicago on issues surrounding obscenity. Finally, I was designated as an expert for Attorney General Meese's Commission on pornography.

Where the issues of nudity - and the nudist lifestyle - are concerned, besides being qualified as an expert in several related cases, I have done empirical research in this area as well. My work is described below. Additionally, I lecture on this issue in my "Sex and the Law" class at UCLA.

Please find my C.V. attached. [not in petition]

**Research on Nudity**

There are many opinions about the consequences of childhood exposure to nudity (and the nudist lifestyle) - particularly the adverse effects. Paradoxically, however, there is very little empirical research on the topic.

One exception is an 18-year longitudinal study of early childhood exposure to parental nudity conducted by my students and I (Okami, P., Olmstead, R., Abramson P.R. & Pendleton, L. (1998). Early childhood exposure to parental nudity and scenes of parental sexuality ("primal scenes"): An 18-year longitudinal study of outcome.

Archives of Sexual Behavior, 27,361-384). It is the most comprehensive, and only longitudinal study to date on the subject of nudity and children. It represents part of the UCLA Family Lifestyles Project (FLS).

FLS was founded in 1973 to examine emergent family lifestyles of that eta. Fifty "conventional" and 154 "nonconventional" families, matched for ethnicity and socioeconomic status, were enrolled prior to the birth of their child (who was the specific target of this study). "Conventional" families were defined as those in a "marital couple relationship", whereas "nonconventional" families included single mothers, couples living in communes or other group living situations, and "social contract" couples.

The outcome data for the impact of nudity was collected when the child between 17 and 18 years of age. Note also, that between 95%-98% of the original families are still participating in this study.

Our specific objective was to examine differences between children exposed to parental nudity and those children not so exposed. The outcome measures included: self-acceptance; relations with peers, parents and adults; anti-social behavior (e.g. petty or felony theft, fighting, assaults, vandalism); substance abuse (including a wide variety of nonprescription, prescription and illicit substances); quality of sexual relationships; experiences with pregnancy; sexually transmitted diseases; and suicidal feelings.

Simply stated, there were NO adverse effects on any of our outcome measures as a consequence of exposure to parental nudity. In fact, in most cases, the opposite was true.

Exposure to parental nudity was associated with positive, rather than negative, sexual experiences in adolescence - and REDUCED sexual experience overall. Boys exposed to parental nudity were less likely to have engaged in theft in adolescence or to have used various psychedelic drugs and marijuana.

Clearly, the empirical data indicate that observing adult nudity is not harmful, and in certain circumstances, can be beneficial. Nudity per se is not sex, and children exposed to parental nudity are not "oversexed". Again, the opposite appears to be true - reduced, but positive experiences with sex. Finally, it appears that parental nudity is associated with a number of beneficial outcomes, including less anti-social, and substance abuse, behavior.

Though not longitudinal, other research in the area indicates that children of social nudists have more positive body self-concepts than non-nudist children (Story, 1979). Combined with the findings above, it suggests that there is no empirical basis for claiming that children are harmed by being part of a nudist lifestyle. In fact, the lifestyle has several documented benefits, in terms of body image and adolescent stability.

Nudity is also an integral part of many cultures, either through shared sleeping arrangements, nudity in the home, or clothing optional beaches. It has both legitimacy, and support, within those cultures. Furthermore, nudity is part of the fabric of the way humans live. National Geographic implicitly emphasizes as much. Thus, the naked human body is both "natural" and can be part of a healthy lifestyle choice.

Finally, it is my opinion that Hippie Hollow should be made available to families, as well as adults. The nudist lifestyle offers important benefits, that are best preserved in a safe and well maintained environment. Since Hippie Hollow is operated by a County government, and patrolled by Park Rangers, it is the obvious - and ideal - choice for expressing a nudist family lifestyle.

If you have any further questions, do not hesitate to contact me (310-825-7214).

FURTHER AFFIANT SAYETH NOT.

/s/_____
Paul R. Abramson, Ph.D.

SUBSCRIBED AND SWORN TO BEFORE ME, on this 24th day of May, 1999.

/s/_____
Ben R. Satterfield Comm. #1101509
Notary Public - California Comm. Exp. June 16, 2000

(2)
Supreme Court, U.S.
FILED
AUG 30 2001

No. 01-214

In The

# Supreme Court of the United States

CENTRAL TEXAS NUDISTS, ROBERT A. MORTON, JR.; and CHRISTINE A. MORTON, Individually and as next friend of ROBERT A. MORTON, III, REBECCA E. MORTON and CHARLES G. MORTON, Minor Children,

*Petitioners,*

vs.

COUNTY OF TRAVIS AND LOWER COLORADO RIVER AUTHORITY,

*Respondents.*

**On Petition For A Writ Of Certiorari To The Third Court Of Appeals Of Texas**

## RESPONDENTS' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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31pp

## QUESTIONS PRESENTED FOR REVIEW

RESTATEMENT OF PETITIONERS' QUESTIONS 1&2:

> Were Petitioners improperly denied a constitutionally protected right to be nude in public with their children at a clothing optional park where evidence establishes that there exists a governmental interest limiting children's exposure to sexual offenses and possible victimization?

QUESTIONS PRESENTED BY PETITIONERS:

I. The practice of social familial nudism-parents engaging in public recreational activities with their children and other like-minded individuals while nude – is the means by which naturist parents instill important values in their children. Is this expressive activity protected by the First Amendment?

II. Does the United States Constitution limit the ability of a state to interfere with and unduly impede the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism?

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## SUMMARY OF ARGUMENT

The core issue before this court is whether parents have a constitutionally protected right to be nude with their children in a public park. Essentially the Petitioners ask this court to provide them an unprecedented protection that is not supported by any constitutional authority. The park rules at issue merely regulate one location where children under the age of eighteen may not appear nude or be present. These rules do not prevent families from engaging in the naturist philosophy nor does it prevent parents from teaching their children about the naturist lifestyle.

The park rules are presumptively valid and it is the Petitioners' burden to establish that the park rules are wholly arbitrary. *Kite v. Marshall,* 661 F.2d 1027 (5th Cir. 1981). The Petitioners failed to meet this burden at the trial court. The park rules do not address a fundamental right and therefore should be analyzed under the rationally related test as applied by the Supreme Court in *Zablocki v. Redhail,* 434 U.S. 374, 98 S.Ct. 673 (1978).

However, even if the court were to apply the strict scrutiny test, the park rules would be upheld. The Travis County Commissioner's Court had a compelling interest in ensuring the safety and welfare of minors, especially where specific dangers and substantial risks of violations of criminal statutes were established. The park rules are narrowly tailored to achieve the goal of protecting minors. In 1995, Liberty Action International (a nudist/naturalist organization) sponsored an event which proposed the involvement of nude children in a "poster

contest" at Hippie Hollow. As such, Travis County narrowly tailored the park rules to prohibit the admission of minors into the park so as to ensure that photographs were not taken of nude minors, to ensure that exposure to sexual offenses and possible victimization were limited, and to ensure consistency with state law. In addition, the provision prevents a claim that Travis County has acquiesced to an increased risk of criminal activity, particularly involving children at Hippie Hollow. The compelling interest of the state in protecting children would outweigh any incidental infringement of a fundamental right. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673 (1978).

The evidence is clear and uncontroverted that Hippie Hollow consistently had the highest rate of sexual offenses of any other county park. It is also undisputed that the terrain and the nature of the offenses at the park are obstacles to adequate policing for the safety and well being of children. (Appendix I: Affidavit of Charles Bergh; Appendix II: Affidavit of Roger Dean). It is important to note that no controverting evidence was provided regarding the safety of children at McGregor/Hippie Hollow Park or regarding the ability to police the area.

Petitioners argue that the Third Court of Appeals improperly found that the Travis County park rules are constitutional. Petitioners also assert that this case essentially determines the "viability of the naturist movement in the country." However, Petitioners lobby this proposition without evidentiary support. No logical connection has been articulated to support the conclusion that park rules prohibiting minors in a single location would define the destiny of the entire naturist movement in the United States. Obviously, this dramatic interpretation is a blatant

attempt to create a reason for judicial review so that Petitioners can find validation of their lifestyle choices. However, Petitioners cannot escape the fact that the implications of this case will be limited to the park rules in question and Petitioners cannot disguise the overwhelming evidence in support of the park rules by merely using conjecture, supposition, and argument to advance their philosophical beliefs.

Neither the ruling by the Third Court of Appeals of Texas, nor the record below, raise the questions presented by the Petition. The case does not address whether the United States Constitution "prohibit[s] a local government from impeding the right of fit parents to direct the moral and social upbringing of their own children through the practice of social familial nudism." *See*, Petition for Writ of Certiorari page 2. This case would do nothing more than afford this Court the chance to determine whether content-neutral park rules that prohibit minors from entering a clothing-optional park is reasonably related to the government interest of protecting the welfare and safety of minors when uncontroverted evidence of the possible dangers to children exists. Conveniently, Petitioners once again wholly fail to address the risks that are posed to children at McGregor/Hippie Hollow Park. In this instance, Petitioners not only avoid discussion of these risks in the petition, but also neglect to present any of the relevant evidence to this Court.

Furthermore, this ruling is not in conflict with the United States Constitution, or the recent Supreme Court cases, *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446 (2000), or *City of Erie v. Pap's A.M.*, 539 U.S. 277, 120 S.Ct. 1382 (2001).

The ruling by the Third Court of Appeals was proper and Respondents respectfully request this Honorable Court to deny the Petition for Writ of Certiorari.

## STATEMENT OF FACTS

The instant lawsuit was filed after the Travis County Commissioner's Court amended the Travis County Parks' Rules to include rules setting the park policy for Hippie Hollow, a County maintained park. The rules state: 1) "No person under the age of 18 shall be admitted into McGregor/Hippie Hollow" and 2) "Any authorization or consent to the nude display of children and the nude display of adults with children present under the age of eighteen in this park will be treated as a violation of the law and park rules. Violators and parties to such violations will be investigated and prosecuted if possible." (Appendix D, E, F, & G of Petition for Writ: Transcripts of Commissioner's Court Minutes). These rules were adopted July 11, 1995, after the County received notice through publicity by Liberty Action International, a nudist/naturalist organization, that the group intended to sponsor a "poster contest" for children at Hippie Hollow. (Appendix F & G of Petition for Writ: Transcripts of Commissioner's Court Minutes). By adopting the provision, the Travis County Commissioner's Court responded to concerns that the presence of nude children with nude adults, or nude adults with children, clothed or nude, would possibly violate Texas law. Contrary to Petitioners' unsupported assertions, the evidence shows that the Travis County Commissioner's Court was also responding to concerns that the presence of children under the

age of eighteen years at the McGregor/Hippie Hollow park could place the children in danger of being exploited and that the presence of children at the park might increase the possibility of violations of Texas law. (Appendix F & G of Petition for Writ: Transcripts of Commissioner's Court Minutes and Appendix I: Affidavit of Bergh & Appendix II: Affidavit of Dean). Prior to adopting the park rules, the Travis County Commissioner's Court held public sessions regarding the proposed rules. The rules were adopted in order to protect the safety and welfare of minors in addition to making the park rules consistent with state law. (Appendix G of Petition for Writ: Transcripts of Commissioner's Court Minutes).

The park is a clothing optional facility, so that park patrons may choose whether or not to be clothed, as long as their presence or conduct did not violate state law or park rules. The park area is bordered by other publicly accessible areas making it open to public view from the land and the waterfront, which borders Lake Travis. Other public places, such as a restaurant, also border Lake Travis across from the Hippie Hollow beach. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean).

Central Texas Nudists and Robert and Christine Morton, individually and on behalf of their three children, sued Travis County alleging that the park rules were unconstitutional and violated their familial right to privacy, equal protection, substantive due process, freedom of expression, and rights of association under the United States and Texas Constitutions.

## ARGUMENT

### I.

### REASON FOR DENYING WRIT OF CERTIORARI

Contrary to Petitioners' assertions, this case neither implicates the first or the fourteenth amendments of the Constitution nor does this case hold the key to "the continued viability of the naturist movement in the country." *See*, Petition for Writ of Certiorari, page 7. The core issue is whether parents have a constitutionally protected right to be nude with their children in a public park where there is evidence that the children would be exposed to a high number of sexual offenses. This case solely addresses whether content-neutral park regulations can prohibit children at a public clothing-optional park with a high number of sexual offenses is rationally related to the governmental interest of ensuring the welfare and safety of children by preventing exposure to sexual offenses and possible victimization.

#### A. Neither the record nor the ruling below raises the questions presented by the petition.

The case below, as it relates to Petitioners' claim, merely would afford this court the opportunity to determine whether content-neutral park rules which prohibit minors into a single clothing-optional park is reasonably related to the governmental interest of protecting the welfare and safety of minors, where statistical evidence of possible dangers exist.

The Third Court of Appeals, Texas answered this question in the affirmative and found that the park rules prohibiting minors into a clothing-optional park are constitutional. The Third Court of Appeals found that based

on the evidence presented at summary judgment, "[n]either rule prohibits appellants from raising children according to the naturist philosophy." (Appendix A of Petition for Writ: *CTN, et al. v. Travis County, et al.*, No. 03-00-00024-CV, 2000 Tex. App. LEXIS 8136 (Austin – Dec. 7, 2000, pet. denied).

The record below and the ruling of the Third Court of Appeals show that the park rules are content-neutral provisions that further the interest of protecting minors from exposure to sexual offenses and possible victimization. Yet, the questions presented by Petitioners completely ignore the governmental interest in ensuring the welfare and safety of children at McGregor/Hippie Hollow Park. Instead, Petitioners attempt to misdirect attention to an irrelevant discussion about "social familial nudism" and the expressive activity, which may be associated with that activity. Although Petitioners continually espouse the mantra that this case will determine the "continued viability of the nudist movement in the country," the record, the underlying ruling, nor the questions presented address this issue.

The record below clearly establishes with uncontroverted evidence that the danger exists that children might be exposed to criminal activity or might be victimized at Hippie Hollow. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The number of sexual offenses are higher in McGregor/Hippie Hollow Park than in any other County park. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The uncontroverted evidence also shows that the terrain and the nature of the offenses at the park are obstacles to adequate policing so as to ensure the safety and well

being of the children. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Specifically, the police will be unable to prevent photographs of naked children being taken in the park, from passing boats or from the opposite shoreline. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Once taken, such photographs could be used to the long term detriment of children.

The main purposes of the Travis County rules prohibiting minors at Hippie Hollow are to protect the safety and welfare of children and to safeguard them from possible exploitation. Promulgation of regulations intended to protect the safety and welfare of children, such as the Commissioner's Court rules prohibiting minors at Hippie Hollow, are, therefore, constitutionally permissible. It is also imperative for the Commissioner's Court to adopt provisions consistent with state laws, particularly criminal statutes, so as to prevent defensive claims that violations are allowed by Travis County. The park rules are narrowly tailored in that they do not prevent or disturb the ability of parents to raise their children in accordance with their philosophies, and the provisions do not prevent the Petitioners from practicing their naturist beliefs. The park rules merely do not allow minors, clothed or unclothed, in a clothing-optional park where children may be exposed to various dangers.

The harms that the park rules are designed to prevent are beyond the control of the parents. For example, Hippie Hollow is located on Lake Travis, a large, public lake bordered by other park areas and public facilities such as restaurants. It would be entirely possible, indeed

probable, that photographs could be taken of nude children by another park visitor or boater on Lake Travis, and these photographs could later be published or sold. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). Banning photography at the park, at other surrounding parks, at area restaurants bordering the lake and within view of the main beach at Hippie Hollow, and on all of Lake Travis would be impracticable, unreasonable, if not impossible to enforce.

There are statistically more instances of illegal, sexual conduct at Hippie Hollow than at any other Travis County park facility.[1] (Appendix II: Affidavit of Dean). Individuals have been reported, cited, or arrested for group masturbation, sexual intercourse, and other acts which are illegal under the Texas Penal Code, Section 21, "Sexual Offenses." (Appendix I: Affidavit of Bergh). Clearly, it is not possible for the government to completely prevent all such conduct; however, the exposure

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[1] The evidence is that in the fiscal year 1994 of the 74 sexual offenses that were reported in the 30-park Travis County park system, 64 incidents were reported at Hippie Hollow. In the 1995 fiscal year through September 1st, of 49 sexual offenses in the park system, 43 were reported at Hippie Hollow. In fiscal year 1996, thirty-three (33) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-eight (28) incidents of sexual offenses were reported at Hippie Hollow. In fiscal year 1997, twenty (20) incidents of sexual offenses have been reported in the Travis County park system. Of those, seventeen (17) incidents of sexual offenses were reported at Hippie Hollow. In 1998, twenty-eight (28) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-seven (27) incidents of sexual offenses were reported at Hippie Hollow. (Appendix I: Affidavit of Bergh & Appendix II: Affidavit of Dean).

of children to these acts is an unacceptable risk to the Commissioners of Travis County. Accordingly, the park rules are narrowly tailored to meet the compelling interest discussed previously and no less intrusive measure exists to accomplish this goal. (Appendix B: Affidavit of Dean).

Even Petitioners concede that certain behavior at Hippie Hollow is inappropriate for children[2] and present no evidence to refute the potential danger to children. Petitioners only concentrate on their belief structure. In doing so, Petitioners turn a blind eye to the behavior at Hippie Hollow, which is, by their own testimony, inconsistent with the naturist philosophy and poses a threat to children.

Furthermore, neither the record nor the ruling implicates the viability of the naturist movement. The assertion that the naturist movement is in any way impacted by the park rules is disingenuous. The viability of this movement which, according to the Petitioners, has been around for sixty years, is not threatened by the park rules. *See*, Petition for Writ of Certiorari, page 8. In fact, the websites[3] referenced by Petitioners establish the growing viability of this movement well beyond the boundaries of Hippie Hollow Park. *See*, Petition for Writ

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[2] Petitioner testifies that he experienced a situation at Hippie Hollow that potentially exposed his children to "inappropriate behavior." *See*, Appendix H of the Petition for Writ of Certiorari, Affidavit of Robert Morton, Jr., page 137a, paragraph 11.

[3] These websites are improperly before the court because they were not summary judgment evidence.

of Certiorari, page 8. In addition, Petitioners testify that their children, who were ages 12 and 16 in 1999, were well-rounded productive members of society who embrace the naturist philosophy. The reality is that the Petitioners clearly were able to imbue their children with their belief structure without the use of Hippie Hollow Park. As such, the park rules do not silence the naturist movement nor do the rules infringe on Petitioners' ability to inculcate their children with a particular belief structure.

### B. Recent Supreme Court decisions do not need to be clarified in relation to this case.

The Trial Court did not err in granting Travis County's Summary Judgment because Petitioners were not improperly denied a constitutionally protected right to be nude in public with their children. No conflicts exist among the courts. In addition, the ruling by the Third Court of Appeals does not require clarification.

#### 1. *City of Erie v. Pap's A.M.'s* impact on this case.

This Court's recent decision in *City of Erie v. Pap's A.M.*, 539 U.S. 277, 120 S.Ct. 1382 (2001) reaffirms that "[b]eing 'in a state of nudity' is not an inherently expressive condition." *City of Erie v. Pap's A.M.*, 539 U.S. 277 at 289. As in *Erie*, this park rule, "[b]y its terms, . . . regulates conduct alone." *City of Erie v. Pap's A.M.*, 539 U.S. 277 at 290. As such, the first amendment is not implicated.

However, even if the Court were to determine that the first amendment was implicated, the Court still would apply the *O'Brien* factors as relied upon in *City of Erie v. Pap's A.M.* *See, United States v. O'Brien,* 391 U.S. 367, 88 S.Ct. 1673 (1968). Application of the *O'Brien* factors results in a finding that the park rules are constitutional because they are content-neutral rules that address the governmental interest of protecting children from exposure to sexual crimes and possible victimization. Evidence of the types of potential dangers supports the link between the park rules and achieving the governmental interest of protecting the welfare and safety of minors.

In fact, the park rules mirror the park rule upheld in *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 104 S.Ct. 3065 (1984). In *Clark,* the court held that a National Park Service regulation prohibiting camping in certain parks did not violate the First Amendment when it was applied to prohibit demonstrators from camping overnight. The Court, even when assuming that the sleeping was expressive conduct, found that because the government's interest in protecting the park was unrelated to the message, the park rule was constitutional. Similarly, in this situation, the government's interest in protecting minors is unrelated to the message of "social familial nudity." Thus, the park rules are constitutional.

In *City of Erie,* this Court also found that banning a means of expression through a regulation that may have an incidental effect on the expressive element of the conduct does not make the provision unconstitutional. *City of Erie v. Pap's A.M.,* 539 U.S. 277 at 293. Even if nudity in public can be said to contain an expressive element, the park rules in this case have only the effect of

limiting one particular location for parents to convey their naturist message. As such, in light of the governmental interest in protecting minors, the park rules are constitutional.

### 2. *Boy Scouts of America v. Dale* is not implicated in this case.

Contrary to Petitioners' assertions, *Boy Scouts of America v. Dale*, 530 U.S. 640, 120 S.Ct. 2446 (2000) is distinguishable from the case at bar. In *Boy Scouts*, the issue was the forced inclusion of an unwanted person into a group when the inclusion of that person's presence affects in a significant way the group's ability to advocate a viewpoint. In this instance, no forced inclusion exists. In fact, Petitioners admit they have successfully inculcated their children with their belief structure without the use of Hippie Hollow Park.

The freedom to expressive association has never been absolute, as recognized in *Boy Scouts of America v. Dale*, 530 U.S. 640 at 641, and expressive association can be limited if the inclusion does not affect in a significant way the group's ability to advocate a viewpoint. *Id.* In this instance, the evidence establishes that the ability to advocate a viewpoint was undeterred.

As discussed *supra*, Travis County has an interest in ensuring the welfare and safety of children at its parks. Enacting a content-neutral regulation that did not ban nudity altogether, but merely limited access to minors furthered this interest. Although *Boy Scouts of America* recognizes various forms of expressive conduct, it does not in any way alter the constitutionality of the park

rules, because, according to Petitioners' evidence, the park rules do not affect in a significant way the group's ability to advocate a viewpoint. Furthermore, the Petition for Writ also demonstrates the growing number of naturists in the United States; thus, Petitioners negate the proposition that the park rules have impacted in a significant way the group's ability to advocate a viewpoint.

Petitioners also assert that the park rules somehow infringe on the fundamental right to raise their children. However, the rules do not infringe on the right to raise children according to the naturist lifestyle, but rather "the rules impose a restriction on where the practice of that philosophy may occur by establishing an age restriction for admittance to McGregor/Hippie Hollow Park that applies to all families." (Appendix A of Petition for Writ of Certiorari; *CTN v. Travis County*). The park rules do not infringe on a fundamental right. Additionally, an incidental interference with a fundamental right is permissible under a mere rationality test, which is easily met in this matter. *Kite v. Marshall*, 661 F.2d 1027 (5th Cir. 1981).

### C. This case does not have far reaching implications.

Petitioners improperly attempt to present this case as a seminal case on whether familial nudity is socially acceptable; however, this representation is unwarranted. Petitioners focus on the recent Supreme Court cases to argue that the Third Court of Appeals, Texas has stifled the ability of naturist parents to imbue their children with their belief structure. The connection between the instant

case and the recent Supreme Court cases for the proposition of "silencing" expressive association are, at best, tenuous.

The park rules do not infringe on the right of parents to raise children. The rules impose an age restriction for admittance to McGregor Park that applies to all families As is consistently recognized, parental rights are not absolute. *Zablocki v. Redhail*, 434 U.S. 374, 98 S.Ct. 673 (1978), *Wisconsin v. Yoder*, 406 U.S. 205, 92 S.Ct. 1526 (1972). An incidental effect upon a fundamental right is constitutional if there is a governmental interest in protecting the welfare of children, as has been established by the evidence in this case. *Id.*

The park rules do not infringe on expressive association and are not a mechanism to stifle Petitioners' speech. Even according to Petitioners, Travis County has been a hospitable place for the naturist movement. The rules do not hinder that movement. A ruling by this court would serve no purpose but to uphold or nullify park rules limiting minors at a clothing-optional park in central Texas. Therefore, the park rules do not require this Court's review.

## II.

## PETITIONERS MISCHARACTERIZE THE EVIDENCE PROVIDED AS SUMMARY JUDGMENT EVIDENCE.

It is imperative to identify for the Court portions of the Petitioners' facts that are inconsistent and unsupported by the summary judgment evidence. Petitioners compensate for the lack of evidence by making conclusory assertions, in hopes that the argument provided

by counsel will be sufficient to support these conclusory allegations. Although it is appropriate to advocate a position, the Petitioners may not substitute argument, presumption and supposition as evidence to defeat Travis County's Motion for Summary Judgment.

### A. Affidavit of Paul Abramson is irrelevant.

Dr. Paul Abramson's affidavit is irrelevant[4] to any issue addressed by this Court. Petitioners seem to search for validation of their lifestyle choice and therefore fail to recognize that the merits of the naturist lifestyle are not at issue. The issue for the Court is the safety and welfare of the children at Hippie Hollow. In his affidavit (page 2), he states "there are No adverse effects on any of our outcome measures as a consequence of *parental nudity.*" In this statement, he limits his finding to parental nudity within the home. This assertion is completely irrelevant to whether Hippie Hollow is a safe environment for children, where the children may be exposed to a myriad of sexual offenses, and which may expose the children to victimization. Contrary to Petitioners' assertions, his affidavit does NOT state that exposure to social familial nudity is likely to assist parents in their effort to teach children.[5]

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[4] Travis County's objections to Dr. Abramson's Affidavit were sustained.

[5] It is important to note that Dr. Abramson did not provide any evidence to support any finding that "exposure to familial nudity" assists in teaching children.

### B. Petitioners have no evidence concerning safety at Hippie Hollow Park.

Petitioners wholly fail to provide any evidence to controvert the existence of safety issues regarding children at Hippie Hollow, i.e., the ability to photograph nude children from the lakeshore on passing boats. (Appendix I: Affidavit of Bergh; Appendix II: Affidavit of Dean). The Petitioners' response to the evidence of the risk of exposing minors to a high number of sexual offenses at Hippie Hollow is merely to present an anecdotal account of the Mortons' experiences at Hippie Hollow. Once again, Petitioners incorporate facts that are wholly absent from the summary judgment evidence. In fact, the evidence is to the contrary. The uncontroverted evidence, which was unobjected to by Petitioners and which can be accepted as an accurate method of statistical analysis, is that within the county parks system Hippie Hollow has a higher number of sexual offenses than any other Travis County park.

## CONCLUSION AND PRAYER

After considering the relevant facts and applicable law, the Third Court of Appeals, Texas properly found that the park rules were constitutional. Contrary to Petitioners' assertions, these park rules do not improperly infringe on the expressive association and do not impede the ability of a parent to imbue their children with a particular belief structure. This case raises no significant issue of constitutional law that warrants review by this Court.

For all of the foregoing reasons the Respondent respectfully requests that this Honorable Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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## APPENDIX I

## CAUSE NO. 95-11383

| | |
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| CENTRAL TEXAS NUDISTS, AND ROBERT A. MORTON, JR. AND CHRISTINE A. MORTON, INDIVIDUALLY AND AS NEXT FRIEND OF ROBERT A. MORTON, III, REBECCA E. MORTON, and CHARLES G. MORTON,<br><br>Plaintiffs<br><br>V.<br><br>COUNTY OF TRAVIS,<br><br>Defendant. | IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS<br><br>201st JUDICIAL DISTRICT |

## AFFIDAVIT OF CHARLES BERGH

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a notary public, personally appeared Charles Bergh, who being by me first duly sworn upon his oath, deposed and stated as follows:

"My name is Charles Bergh. I am above the age of eighteen years, competent to make this affidavit, and have personal knowledge of the facts stated herein."

"I am the Division Director for the Parks and Natural Resources Division of the Transportation and Natural Resources Department of Travis County, Texas. I have been employed as the Division Director for Parks and Natural Resources for approximately eight years. As Division Director, I am responsible for the administration of all Travis County parks, environmental compliance, and resource protection for Travis County, Texas. There are thirty (30) parks in the Travis County park system."

"McGregor/Hippie Hollow Park ("Hippie Hollow"), located at 7000 Comanche Trail, Austin, Texas, is one of the Travis County parks under my administration. Hippie Hollow is the only public "clothing optional" facility located in Travis County, Texas. As of July 11, 1995, children under the age of eighteen (18) years were no longer allowed into the clothing optional park."

"It is part of the duties of the Parks and Natural Resources Division to record and monitor all incidents which occur in the Travis County park system, i.e., violations of any park rules or state laws. The records keeping system includes a collection of all incident reports completed by members of the parks staff. These incident reports are then keyed into a computer system database. Prior to 1996, incident reports involving those sexual offenses which appear in Chapter 21 of the Texas Penal Code were keyed in as "other" with a notation as to the offense. Since 1996 there has been a category called "public indecency," which incorporates these same offenses. In addition, records are kept with regard to public intoxication, sexual harassment, and other violations of the law. It is part of my job to maintain these records.

"In fiscal year 1994, seventy-four (74) incidents of sexual offenses were reported in the Travis County park system. Of those, sixty-four (64) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-1."

"In fiscal year 1995, forty-nine (49) incidents of sexual offenses have been reported in the Travis County park system. Of those, forty-three (43) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-2."

"In fiscal year 1996, thirty-three (33) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-eight (28) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-3."

"In fiscal year 1997, twenty (20) incidents of sexual offenses have been reported in the Travis County park system. Of those, seventeen (17) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-4."

"In fiscal year 1998, twenty-eight (28) incidents of sexual offenses have been reported in the Travis County park system. Of those, twenty-seven (27) incidents of sexual offenses were reported at Hippie Hollow. Attached hereto and incorporated by reference as Exhibit A-5."

"In addition, in the years prior to the enactment of the park rule prohibiting minor children in McGregor/ Hippie Hollow Park, there have been incidents involving indecency with children.

"This rule protects minors from such things as exposure to sexual offenses and public intoxication, and protects them from being photographed in the nude. The location of Hippie Hollow, which includes a beach front or shoreline, prevents any absolute policing of people taking naked pictures of children from boats and the opposing shoreline. Furthermore, the terrain of the park inhibits the effectiveness of law enforcement of protecting children from being exposed or subject to sexual and/or criminal offenses. In particular, the park is heavily wooded and does not allow for adequate policing and leaves children vulnerable.

"Budgetary constraints prevent the providing of mass numbers of personnel to be present at all times so as to protect the children. The rule limiting admission to the park to those over the age of eighteen is the best mechanism to ensure that children will not be exposed to sexual offenses or be photographed naked in the public setting of Hippie Hollow, where there is a history of many sexual offenses occurring in public."

/s/ _____
Charles Bergh

SUBSCRIBED AND SWORN TO BEFORE ME on this 24th day of May, 1999, to certify which witness my hand in official seal.

/s/ _____
Amy L. Firkins
Notary Public in and for
the State of Texas
Commission Expires
Sept. 5, 2001

## APPENDIX II

**CAUSE NO. 95-11383**

| | |
|---|---|
| CENTRAL TEXAS NUDISTS, AND ROBERT A. MORTON, JR. AND CHRISTINE A. MORTON, INDIVIDUALLY AND AS NEXT FRIEND OF ROBERT A. MORTON, III, REBECCA E. MORTON, and CHARLES G. MORTON,<br><br>Plaintiffs<br><br>V.<br><br>COUNTY OF TRAVIS,<br><br>Defendant. | IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS<br><br>201st JUDICIAL DISTRICT |

## AFFIDAVIT OF ROGER DEAN

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, a notary public, personally appeared Roger Dean, known to me to be the person whose name is subscribed to the foregoing instrument, who being by me first duly sworn upon his oath, deposed and stated as follows:

"My name is Roger Dean. I am above the age of eighteen years, competent to make this affidavit, and have personal knowledge of the facts stated herein."

"I am a Park Ranger Supervisor for the Northwest District of Travis County for the Parks and Natural Resources Division of the Transportation and Natural Resources Department of Travis County, Texas. The Northwest District includes McGregor/Hippie Hollow Parks. I have been employed as a Park Ranger Supervisor since April of 1995. I am presently a licensed peace officer. Prior to my present position, I was the Chief of Police for the City of Rollingwood for 5 years and was with the Rollingwood Police Department for a total of ten (10) years. As a Park Ranger Supervisor, my duties are to supervise the Park Rangers and staff in the Northwest District and also personally patrol the areas assigned to my district. My job requires that I am familiar with various penal code statutes so that I may be able to enforce these provisions in the Travis County parks system. I am also familiar with the logistics of policing the parks, specifically McGregor/Hippie Hollow."

I am trained and licensed by and through the Texas Commission on Law Enforcement Officer's Standards and Education, ("TCLEOSE"), and I have approximately 14 years of law enforcement experience. I am a TCLEOSE licensed peace officer and also hold a license as an Advanced Certified Peace Officer."

"McGregor/Hippie Hollow Park ("Hippie Hollow"), located at 7000 Comanche Trail, Austin, Texas, is one of the Travis County parks that I patrol on a regular basis. Hippie Hollow is the only public "clothing optional"

facility located in Travis County, Texas. As of July 11, 1995, children under the age of eighteen (18) years were no longer allowed into the clothing optional park."

"It is part of the duties of the Parks and Natural Resources Division to record and monitor all incidents which occur in the Travis County park system, i.e., violations of any park rules or state laws. As a peace officer assigned to patrolling McGregor/Hippie Hollow, I am aware of the types of incidents that occur at this park as well as other Travis County parks. Based on my experience, McGregor/Hippie Hollow has a higher number of sexual offenses occurring in the park than the other parks that I patrol. In the course of my job duties, I have witnessed the various types criminal offenses, particularly sexual offenses which often occur within the view of other park goers. I have also been involved with numerous arrests in this area involving various criminal offenses.

"I have reviewed the incident reports attached to and incorporated by reference in Charles Bergh's affidavit. The types of incidents described in these reports are consistent with my experience as a park ranger and as a supervisor of park ranger in McGregor/Hippie Hollow parks and these incidents do occur at McGregor/Hippie Hollow parks frequently."

"In my expert opinion which based on my experience and training in law enforcement and as a park ranger, this park rule protects minors from such things as exposure to sexual offenses and public intoxication, and protects them from being photographed in the nude. The location of Hippie Hollow, which includes a beach front

or shoreline, prevents any absolute policing of people taking pictures of naked children from boats and the opposing shoreline. Furthermore, the terrain of the park inhibits the effectiveness of law enforcement in protecting children from being exposed or subject to sexual and/or criminal offenses. In particular, the park is heavily wooded and does not allow for adequate policing and often leaves children vulnerable."

"As a Park Ranger Supervisor, it is my opinion this prohibition is the only way to ensure that the children are protected from the various types of offenses and issues listed above. The rule limiting admission to the park to those over the age of eighteen is directly related to the goal of ensuring that children will not be exposed to sexual offenses, be victimized or be photographed naked in the public setting of Hippie Hollow, where there is a history of many sexual offenses occurring in public. It also allows law enforcement to prosecute crimes against children which may be classified as sexual offenses without providing the defense that 'this type of behavior must be permissible because the park rules allow minors to be present."

/s/ _____

Roger Dean

SUBSCRIBED AND SWORN TO BEFORE ME on this 26th day of May, 1999, to certify which witness my hand in official seal.

/s/ _____

Amy L. Firkins
Notary Public in and for
the State of Texas
Commission Expires
Sept. 5, 2001